

No. 16102 ✓

VOL. 3088

United States

See ALSO 307

Court of Appeals

for the Ninth Circuit

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WARE-
HOUSEMEN AND HELPERS OF AMER-
ICA, LOCAL No. 839, and INTERNA-
TIONAL UNION OF OPERATING EN-
GINEERS, LOCAL No. 370,

Appellants,

vs.

MORRISON-KNUDSEN COMPANY, INC., a
Corporation,

Appellee.

Transcript of Record

In Three Volumes

Volume II

(Pages 379 to 768)

FILED

DEC 12 1958

PAUL P. O'BRIEN, CLERK

Appeal from the United States District Court for the
Eastern District of Washington,
Southern Division.

No. 16102

United States
Court of Appeals
for the Ninth Circuit

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WARE-
HOUSEMEN AND HELPERS OF AMER-
ICA, LOCAL No. 839, and INTERNA-
TIONAL UNION OF OPERATING EN-
GINEERS, LOCAL No. 370,

Appellants,

vs.

MORRISON-KNUDSEN COMPANY, INC., a
Corporation,

Appellee.

Transcript of Record
In Three Volumes

Volume II
(Pages 379 to 768)

Appeal from the United States District Court for the
Eastern District of Washington,
Southern Division.

SAM C. GUESS

having previously been duly sworn, resumed the stand and testified further as follows:

Cross-Examination
(Continued)

By Mr. Etter:

Q. Mr. Guess, in 1955, without trying to be absolutely accurate, let's say, can you tell me how many contractor members belonged to the Associated General Contractors? A. Fifty.

Q. Beg your pardon?

A. Approximately 50.

Q. 50. Can you tell me whether or not those 50 contractors were parties to the A.G.C. contract which has been introduced? I can't recall the exhibit number, because I understand the exhibits aren't available in the absence of the key at the present time, but anyway to identify it, I have reference to the exhibit which I submitted, it being a contract extending from 1950 to December of 1955, if you have it. Having reference to that contract, during that period of time, would there have been about 50 members, could you say generally?

A. Between—actually, between 45 and 55. It varied. Sometimes at the end of the year, you made a slice-off of [499] people that were moved and you clean your records out, it might drop to 45, and during the year would build up to 55, so 45 to 55 and 50 would be an average.

Q. Would be a fair average for those 5 years?

A. Right.

(Testimony of Sam C. Guess.)

Q. Now, the contracts which are here sued upon, and which I believe are in the record as Exhibits No. 2 and 3, as I recall, without picking them up, the A.G.C. executed those contracts, that is, the A.G.C. through you, I believe, Mr. Guess, or some authorized agent? A. Right.

Q. Isn't that correct? A. That is correct.

Q. And you signed on behalf, I would assume, of all of your member contractors?

A. Correct, sir.

Q. That is so, is it not?

A. That is right.

Q. Can you tell me whether any of the 45 or 50 contractors whom you represented at the time Exhibits 2 and 3 were entered into and signed, also signed separate contract agreements with the unions indicated and designated in those two exhibits as signatory parties?

A. I don't believe that any of my contractors would sign a separate and distinct agreement, Mr. Etter, not to my [500] knowledge.

Q. I see. A. I might add this——

Q. Yes?

A. ——that I understand, and I think I stated yesterday, that sometime during 1955 the J. A. Jones Company applied to and was received as a member of the Spokane Chapter.

Q. I understand that.

A. And I understand had become a party prior to their joining the A.G.C., had become a member of the Negotiating Committee down at Hanford.

(Testimony of Sam C. Guess.)

Now, that is my understanding, it is not completely factual.

Q. Now, in March of 1956, I think you told me that you represented, that is, the A.G.C. Chapter, represented two of the contractors who were then involved in performing work under A.E.C. contracts at the Hanford Works Project, to wit, J. A. Jones and plaintiff here, Morrison-Knudsen?

A. That is correct.

Q. That is correct. And at that time, am I correct in assuming that you did not represent any of the other contractors that had A.E.C. construction work in the Hanford Works Area?

A. That is correct. [501]

Q. That is correct. Can you tell me whether or not on or about the 8th day of March of 1956, in your bargaining that you were carrying on with your unions, you accepted an assignment of the bargaining rights of the Hanford contractors?

A. Mr. Etter, I received a copy of a letter, or at least I received a letter, from Mr. Kenneth McCaffree, the assistant—or the Executive Secretary of the Hanford Negotiating Committee, which informed me that he—or that the contractors down at Hanford were assigning us their bargaining rights in accordance with the membership in which they held up here. In fact, when I received the paper, I was completely flabbergasted, because I already had the bargaining rights of those two people, I didn't see how he could transfer to me bargaining rights that I already had, and neither could

(Testimony of Sam C. Guess.)

he transfer to me any bargaining rights of the contractors who were not members of the Association. It is impossible of accomplishment because somebody has got to subscribe to the ethical code and the bylaws of the A.G.C. in order for me to represent them and, therefore, that paper, as far as I was concerned, was an ambiguity in the grossest sense.

Q. Well, then, as I understand it, you were of the opinion first that he could not assign the bargaining rights of [502] two of your people who were members, that is, J. A. Jones and Morrison-Knudsen, because you had already assumed and acted for them as a bargaining agent?

A. I was already acting for them.

Q. Number 2, you could not assume to bargain for the other contractors down there for the reason that, not being members of your organization and not having subscribed to what the requirements might have been, the ethical practices and otherwise, you were in no position, by virtue of the rules and regulations of your organization, to represent them? A. That is correct, sir.

Q. Is that correct? A. That is correct.

Q. Did you so advise Mr. McCaffree?

A. I am not sure, I did not make a transcription or any letter. I think that I discussed the thing over the telephone, to my memory, but as far as writing the letter, I did not do so.

Q. Did you on the 8th day of March during negotiations with the various unions, including the representatives of defendants here, advise them that

(Testimony of Sam C. Guess.)

you had received this letter from McCaffree assigning to you these particular bargaining rights?

A. Mr. Etter, it was on the morning of March the 10th at [503] 10 a.m. that we began a conference with those various unions concerning that letter——

Q. Oh, yes.

A. ——and concerning the letter and conditions of Hanford.

Q. Was it, though, on that morning of the 10th that you advised the unions, including the Engineers and Teamsters, that you had received such a communication and that you were bargaining on behalf of Hanford?

A. The chairman of the Spokane Labor Committee, Mr. Maxwell Sather, opened the negotiations that morning by requesting a statement from each of the parties as to their respective positions regarding the situation at Hanford. Mr. McCaffree summarized the position of the Hanford Contractors Committee, commenting that the consummation of the project agreement in October of 1952 and through the demands of the several unions to terminate such agreements in 1955 and ended with the action of the committee in terminating the project agreement and signing of area association agreements with various unions.

Mr. Rossman then made a statement in which he concurred in Mr. McCaffree's summary of the facts. The qualification of the facts remained that the

(Testimony of Sam C. Guess.)

members of his local union employed on the Hanford Project could not reconcile themselves into taking the cut in take-home [504] pay which would result in immediate transition to the A.G.C. area agreements.

Now, as to actually giving you a specific yes or no question, we went something like—we talked about this proposition, Mr. Etter, until 4 p.m. and so many, many things were said that day, and I could go ahead and read you the entire transcript of the conversation which I made at the time, if you so desire.

Q. No, without going into all of that, I wonder if, examining the minutes, there is anything there that indicates that you advised sometime during these proceedings that you were acting under an assignment of bargaining rights made to you through Mr. McCaffree in your negotiations?

A. No, sir, we didn't state that we were making any negotiations by any assignment of Mr. McCaffree.

Q. Do you recall, Mr. Guess, that I showed you a copy of a contract proposal——

Mr. Etter: We haven't got those yet?

The Clerk: I'm sorry, I can't get the key.

The Witness: I have a copy of it, Mr. Etter.

Q. (By Mr. Etter): Have you really there?

A. May I make an admission of mistake in reading yesterday to you?

Q. Yes. [505]

A. When I read you the proposal that we made

(Testimony of Sam C. Guess.)

to them, I read you a proposal that was arrived at tentatively in caucus, the complete embodiment of which did not occur in this agreement that you showed me on that sheet. That was a boil-down after conferences and working the thing out, and so the proposal that we made to them was as you gave it to us yesterday, of which the copy is right here, and I think I have an extra. This is an extra copy of it, if you would like it.

Q. Now, referring now to that exhibit, whatever number it might be, and accepting Mr. Guess' statement that this is a copy of it and substituting now this for the exhibit while I am inquiring here——

A. Right.

Q. ——you have the words: "Effective March 12, 1956, the provisions of the A.G.C. agreements will apply on the Hanford Project on all A.E.C. contracts, with the following exceptions * * *"

I was reading here from the proposal.

A. Yes, uh-huh.

The Court: What is the date of this?

A. March 10th.

Mr. DeGarmo: This is the 10th, the proposal was made the 10th of March, and I think it was made effective March the 12th. Is that correct, Mr. Guess? [506]

A. That is correct. Now, at that same time, Mr. Etter, we made the proposition to the people, and we actually did take it into effect, that we continue the isolation pay and the bus pay, bus transportation, until March the 19th, and we thought that in

(Testimony of Sam C. Guess.)

that intervening time that we could get this ironed out and mutually agreeable, and one of our strongest members and one of the members of our negotiating committee who has the effect—I mean, has the respect and the co-operation of all the labor people involved, Mr. Dewey Murrow, made a very earnest pleading that we go into this thing to try to amicably settle the proposition so that no one would get hurt, and it was at this deal we were considering the hardship case.

Q. (By Mr. Etter): Now, of course, your proposal speaks of proposing to apply those terms you have to the A.G.C. agreement, isn't that the language?

A. This was going to be an amendment to the A.G.C. agreement.

Q. Yes. Well, you recognized at that time that the unions that you were talking to were still working under an extension, if you can call it that, or still working under the same terms of the agreement with the contracting committee at Hanford that had existed on December the 31st of '55?

A. They were working, Mr. Etter, in a complete and total [507] vacuum in a situation in which we had been very reluctant to do anything overt to prevent the work stoppage on the Project, and we knew and had been told that if we were to make a change in the status quo at the Project, that trouble would result, and so we were continuing in order to try to reach an amicable settlement of the situation.

(Testimony of Sam C. Guess.)

Q. Well, what I am saying, though, is under the notice which Mr. McCaffree had sent on the 29th of December, he had said that they would continue working under the same conditions as at the time of the termination, did he not?

A. He said that.

Q. He said that, that the contractors would continue that, and the contractors and the unions did continue that, did they not, and were continuing it when you were talking with them?

A. Yes, sir, they were continuing it when we were talking to them.

Q. They were continuing. And you did not claim then or had not claimed, had you, with any of these defendants that they were governed by an A.G.C. contract?

A. There was no agreement in effect since the cancellation of the existing Hanford agreement, and we had assumed that a cancellation and a termination of a contract in [508] an area either left a void there or our contract, the existing contract. We had the only then legally constituted contract and it was our opinion that that was to go into effect.

Q. Well, you knew on the 24th of December and the 19th of December, when you signed contracts with the Teamsters and with the Engineers, these two locals that are defendants, you knew then, did you not, that this void was going to be created on the 29th of December—on the 31st day of December—even though there were at that time

(Testimony of Sam C. Guess.)

employees of both Unions working for Morrison-Knudsen working on the Project?

A. We did not know that, Mr. Etter.

Q. Beg your pardon?

A. We did not know that there was going to be a void on that date. We didn't know at the time we signed our agreements, we didn't know what exactly the termination or the cut-off date of the Hanford Agreement was going to be.

Q. Well, then, Mr. Guess, assuming that the Hanford Agreement, if the termination, the void, had not commenced until April of 1956, inasmuch as you have said you didn't know until April of 1956, would you say that your contract, regardless of that, became effective January the 1st as to the same parties? [509]

A. That is an assumption that I just don't know the ramifications of.

Mr. DeGarmo: I think he is asking the witness to draw a legal conclusion.

Mr. Etter: Well, I don't think so.

The Court: I am not sure that I got the question correctly.

(Question read.)

Mr. DeGarmo: Now, just a minute, I have an objection to that question upon the ground that it assumes a fact which is contrary to fact and, therefore, it is asking the witness to speculate upon an issue that is not before the Court.

(Testimony of Sam C. Guess.)

The Court: I will sustain the objection.

Q. (By Mr. Etter): Let's put it this way: When you signed these contracts on the 19th and 24th of December without knowing whether or not or when there would be any termination of the Hanford Agreements, did you intend your contract to be effective January the 1st regardless of termination or otherwise?

A. We intended that our contract, and it was in effect, Mr. Etter, on January 1st and we had so stated on numerous occasions to the unions, that if in the event of a termination of an area agreement and any hardships were to come up, that we would sit down and negotiate [510] hardships with them immediately to come to some agreeable and amicable settlement of the hardship conditions.

Q. Now, Mr. Guess, I would like to direct your attention to a meeting on the 3rd day of November of 1955, at 10:05 a.m.—

Mr. DeGarmo: What was that date?

Mr. Etter: The 3rd day of November.

A. Yes, sir.

Q. Present for the A.G.C. were Sam Guess, Frank Winslow, Max Sather, Neil Dagerstrom, and Dewey Murrow, is that correct?

A. That is correct.

Q. And present for the operating Engineers Union was R. L. "Dick" Hollingsworth and A. A. Rossman?

A. That is right.

Q. At that time there was a discussion of territory and work covered, referring to Article 2?

(Testimony of Sam C. Guess.)

Mr. DeGarmo: Just a minute now, if your Honor please. We are getting right back into the situation we were yesterday, and I object to this upon the ground it is an attempt to show prior negotiations of the parties with respect to an intent as to this contract.

The Court: What was the date of this?

A. November the 3rd, 1955.

Mr. DeGarmo: November 3rd, 1955. [511]

The Court: What is the purpose of this, Mr. Etter?

Mr. Etter: I haven't got to it. I am going to ask the question and if counsel objects and your Honor rules, I won't pursue it any further. Then if it later develops that it is inadmissible, I will make it as an offer of proof in our case. That is what I want to do. In view of your Honor's ruling, I want to ask the question. I won't pursue it any further if there is a ruling on it.

The Court: Yes, I will sustain the objection.

Q. (By Mr. Etter): Do you recall that there was a discussion with respect to the territory and work covered and that the demand and the request was made to clarify more clearly Idaho County, North Half, and Hanford?

Mr. DeGarmo: Just a minute now, Mr. Guess. I object to the question upon the ground that it calls for the witness to state testimony with respect to the prior negotiations of the parties leading up to the execution of this contract and can only be offered for the one purpose of trying to show some

(Testimony of Sam C. Guess.)

variance between the terms of the contract and the intent of the parties.

The Court: Well, I will sustain the objection.

Q. (By Mr. Etter): One more question, then. Do you recall that at that meeting Mr. Dewey Morrow, whom you [512] have just referred to and who was a representative of the A.G.C., stated, in substance and effect, that the A.G.C. is not and was not interested in the Hanford Project because of the fact that it was an old agreement with different fringe benefits contained in it?

Mr. DeGarmo: I object to that question upon the same ground, if your Honor please.

The Court: All right, sustained.

Mr. Etter: Now, I can make an offer of proof now or in my case in chief, whichever——

The Court: Well, I should think the logical place would be in your case. This is only cross-examination, after all.

Mr. Etter: Fine.

The Court: Does that conclude your cross-examination?

Mr. Etter: Just have one or two questions.

The Court: Yes, all right, go ahead.

Q. (By Mr. Etter): Mr. Guess, in December when you signed these contracts for A.G.C. with the defendant unions, you knew at that time that there were members of the defendant unions working for Morrison-Knudsen on the Project?

A. Yes, sir.

Q. You knew that? [513]

(Testimony of Sam C. Guess.)

A. I knew that M-K was on the Project and I have the agreements with the five basic crafts and I would assume that they were working some of my people.

Q. And at the time you signed these agreements with the unions, you knew, too, that the employees were working under the Hanford Works basic agreement, isn't that true?

A. Yes, sir, I knew they were working for the J. A. Jones Company down there.

Q. Yes, under the Hanford Agreement?

A. Right, being paid isolation pay and being furnished bus transportation.

Q. That's right.

Mr. Etter: I think that is all, Mr. Guess.

Redirect Examination

By Mr. DeGarmo:

Q. Mr. Guess, what, if anything, did you have to do with the letter which was written by Mr. McCaffree as Executive Secretary of the Hanford Contractors Negotiating Committee of December 29, 1955, which has been referred to as the letter terminating the Hanford Works Agreement contract?

A. I received a copy of it, Mr. DeGarmo.

Q. Was that your only connection with it?

A. That was my only connection, that and telephone [514] conversations back and forth about it.

Q. Was he speaking for you or your members?

(Testimony of Sam C. Guess.)

A. He was not speaking for me and it came as very much of a shock that such a letter would be written.

Q. Now, reference has also been made to a letter of March 10th—not the letter of March 10th, but the letter which you stated you received from Mr. McCaffree. By the way, do you have a copy of that letter?

A. I believe it is in my brief case, sir.

Q. The letter relating to assignment of bargaining rights is the one that I am referring to.

A. It would be in my brief case, I think.

Q. Well, perhaps we can cover it without the letter itself. What, if anything, did you have to do with that letter which Mr. McCaffree wrote to you purporting to assign bargaining rights?

A. Well, after talking it over with Mr. McCaffree on the telephone and Mr. Henry Thurston of the A.E.C. staff, I called a meeting of the labor committee of the Spokane Chapter.

Q. I am talking about before the letter was written?

A. I had nothing to do with it, sir.

Q. Had he obtained your approval to any such an assignment?

A. No, sir. [515]

Q. Now, when you mentioned during your cross-examination that you had agreed to consider hardship or that you had mentioned hardship cases, were those hardship cases to be considered outside of the A.G.C. agreement or as a part of an addendum to the A.G.C. agreement?

(Testimony of Sam C. Guess.)

A. We offered in the instance of the Hanford Agreement to make an addendum to the A.G.C. agreement. Perhaps it would be interesting to the Court to get our viewpoint particularly on this.

Q. Well, let's just stick to questions and answers. A. Okay.

Q. And then if the Court has any questions, he is always free to ask you.

A. It was an addendum—it was to be an addendum to the A.G.C. agreements.

Q. Well, now, in these negotiations which you testified to yesterday and to which some reference was made today, which occurred between January 1st of '56 and sometime in March of '56, did those negotiations relate to such an addendum or attempting to negotiate such an addendum?

A. We were attempting to arrive at some method or some machinery by which the labor harmony could be reached at Hanford. It was our intention and our express purpose and our expression in writing to those unions to make this machinery or the clauses under which we would [516] operate a part of an addendum to the normal A.G.C. agreement. We would say Schedule B, perhaps.

Q. You mentioned that on the 10th day of March some March 12th dead limit had been set for furnishing of transportation and the payment of isolation pay?

A. That is correct. We had gone as far as we could. We had set the deadline of March the 12th and we would furnish the isolation pay and furnish

(Testimony of Sam C. Guess.)

the busses, and then during the negotiations, Mr. DeGarmo, we made a proposition to them that we would extend that isolation pay and bus transportation one more week in order to try to reach a settlement on it.

Q. That was to the 19th?

A. That is correct.

Q. Now, was there any further extension?

A. Yes, sir, we had a meeting up here on March——

The Court: Pardon me, I didn't get that. When was it you made the extension to the 19th?

A. We made—on March the 10th——

The Court: Oh.

A. ——we agreed that we would project the isolation and bus transportation to March the 19th, and then in our meeting on March the 19th, we agreed to hold over waiting word that some of the unions wanted to get in touch with the Seattle people, Seattle Teamsters, we extended it another [517] day. Actually, we extended it to the 21st. One of my members I was unable to reach or, as a matter of omission, I did not notify one of my contractors, and he furnished bus transportation an extra day, on March the 22nd, I believe it was.

Q. When this extension of time was given, first to the 12th and then to the 19th and then I think you said for one additional day, and, in fact, until the 21st, what was to happen at the end of that time?

A. We would either have an agreement or, if no

(Testimony of Sam C. Guess.)

busses were there, there would be no people going to work, and we were so told in very precise terms that unless we furnished the busses, that there would be no men going on the jobs.

Q. Well, what contract was to be in effect?

A. The A.G.C. contract was to go into effect the day that we finished our agreements with them.

Q. Now, Mr. Guess, under—well, I guess we don't have the exhibits. I want to direct your specific attention to that which has been introduced in evidence here as Exhibit 2 and to Article 7, which reads:

“No Strike, No Lockout. It is mutually agreed that there shall be no strikes, lockouts, or other slowdowns or cessation of work authorized by either party on [518] account of any labor differences pending the full utilization of the grievance machinery set up in Article 9, provided that employees covered by this agreement shall not be expected to pass through a legally established picket line which has been placed by another American Federation of Labor union.”

Now, in your testimony yesterday you mentioned some offer to arbitrate or mediate this matter of the dispute? A. We did, sir.

Q. And was that under the agreement of Article 9 as far as the Teamsters' contract was concerned?

A. Yes, sir, and under Article 10 of the Engineers' agreement.

Q. There is a similar provision in the Engineers' agreement, which is Exhibit 3?

(Testimony of Sam C. Guess.)

A. That is correct.

Q. And what happened with respect to that offer?

A. We were told by Mr. Sewell Davis of the Teamsters that they would not arbitrate. We were also told by Mr. Rossman that he could not arbitrate.

Q. To your knowledge, was there any arbitration by either the Engineers or Teamsters prior to March 23rd, 1956? [519]

A. There was no arbitration, sir.

Mr. DeGarmo: Now, if your Honor please, that completes my redirect of this witness. If counsel has some further questions, I would like him to ask them now and I would like to then ask the permission of the Court to address some further direct questions to Mr. Guess on a subject which I overlooked yesterday.

The Court: Very well. Do you have any further questions?

Mr. DeGarmo: On a subject that has not been covered.

Mr. Etter: I have just about four, I think.

The Court: Yes, all right.

Recross-Examination

By Mr. Etter:

Q. Actually, then, Mr. Guess, the withdrawal that you have mentioned of bus transportation and isolation pay was a joint withdrawal by your members, acting through you, and the Hanford Contractors Committee, was it not?

(Testimony of Sam C. Guess.)

A. It was a withdrawal of my people that had gone as far as they thought they should go.

Q. Yes, but you know that the others withdrew, too, don't you?

A. I do not know that, no, sir; I am only stating that [520] Morrison-Knudsen withdrew.

Q. And up until that time, both A.G.C. and Hanford were negotiating respectively with the same two defendant Unions on the Hanford dispute?

A. All negotiations from March the 10th on were conducted in Spokane, Washington.

Q. That's right, but prior to the 8th, they were being carried on separately by Hanford and by you?

A. Up until the 8th, I don't believe that we entered into any formal—we did not enter into any formal negotiations with the unions concerning any question at Hanford.

Q. But there were negotiations going on with them by Hanford?

A. That I do not know, Mr. Etter.

Q. Well, you talked with Mr. McCaffree several times?

A. I talked with Thurston and I talked with McCaffree and there were lots of things said.

Q. Yes, all right. As I understand, this job was a building construction job, is that right, down there?

A. This was a heavy engineering project, Mr. Etter.

(Testimony of Sam C. Guess.)

Q. Oh, oh. Was it building a building?

A. No, sir, it was a pumping plant.

Q. Pumping plant, all right.

Mr. Etter: That is all, Mr. DeGarmo.

Mr. DeGarmo: This will be direct, if your [521]
Honor please.

The Court: All right.

Mr. DeGarmo: On a different subject.

The Court: You may have further direct, then.

Direct Examination

(Resumed)

By Mr. DeGarmo:

Q. Mr. Guess, I am handing you that which has been marked as Plaintiff's Exhibit 2 and I call your attention on page 12, it is under Article 10, Schedule A, a subject entitled "Health and Welfare," and I would like to ask you to state whether there was a health and welfare plan which had been negotiated through the A.G.C. Chapter, Spokane—A.G.C. Spokane Chapter?

A. The Spokane Chapter of the Associated General Contractors in the summer of 1953 negotiated a health and welfare plan with the Teamsters, and at the same time but not in concurrent negotiations, conducted a health and welfare plan with the Operating Engineers.

Q. Now, what is the fact as to whether during the existence of the Hanford Works Agreement there was also a health and welfare plan provided thereunder?

(Testimony of Sam C. Guess.)

A. To my knowledge, there was no health and welfare plan for the Hanford Contractors. They came into and became a party of the members contributing to the Spokane [522] Chapter and the Eastern Washington Builders Chapter A.G.C. plan, or health and welfare plan, and the members of the Spokane Chapter and the Eastern Washington Builders Chapter of A.G.C. were the trustees. There were no trustee representatives on the health and welfare plan who came from the Tri-City area.

Q. Then, the contributions which were made to the health and welfare plan, regardless of whether they came from your membership or from contractors who were doing business at Hanford and were not members but were contributing under the Hanford Works Agreement, went to the same set of trustees both for the Teamsters and for the Operating Engineers? A. That is correct.

Mr. DeGarmo: That is the only further questions I have, your Honor.

Cross-Examination

(Resumed)

By Mr. Etter:

Q. The employees working on A.E.C projects with A.E.C. contractors were covered, were they not, by an Eastern Washington Health and Welfare Plan that was handled by the employers at Hanford and negotiated by the Hanford Contractors Negotiating Committee?

A. Not to my knowledge, Mr. Etter. [523]

(Testimony of Sam C. Guess.)

Q. For employees on the Hanford Project?

A. Not to my knowledge, sir.

Q. You don't know whether they were or not?

A. I do not.

Mr. Etter: All right, that is all.

Mr. DeGarmo: That is all, Mr. Guess.

The Court: Is that all with this witness, then?

Mr. DeGarmo: Yes.

The Court: All right.

The Witness: Thank you, sir.

(Witness excused.)

Mr. DeGarmo: Mr. Reed, will you come forward, please, and be sworn?

RAMON E. REED

called and sworn as a witness on behalf of the plaintiff, was examined and testified as follows:

Direct Examination

By Mr. DeGarmo:

Q. Your name is Ramon E. Reed?

A. Yes, sir.

Q. And the Reed is R-e-e-d?

A. That is correct.

Q. And the first name, is it R-a-y-m-o-n-d or R-a-m-o-n? A. R-a-m-o-n. [524]

Q. Mr. Reed, where is the present place of your residence, if you are able to tell me?

A. My residence? Richland. I am presently

(Testimony of Ramon E. Reed.)

working on the Kings River Project in California out of Fresno.

Q. You are employed by the Morrison-Knudsen Company?

A. Yes, sir, out of the Los Angeles District.

Q. For how long a period of time, Mr. Reed, have you been an employee of the Morrison-Knudsen Company?

A. In 1952, I was employed, I started employment with the Morrison-Knudsen Company of Canada, Incorporated, and in December of 1955, I came to Richland with Morrison-Knudsen Company, Incorporated.

Q. For the purpose of the record, will you state your age, Mr. Reed? A. 44.

Q. Will you state what formal education you have had?

A. I have a B.S. degree in Civil Engineering at Pennsylvania State College.

Q. And give us some idea of your background, Mr. Reed. Will you state what various activities you have followed since your graduation from the University?

A. In 1935 I went with the Tennessee Valley Authority. I stayed with them until 1939, during which I was on survey crews and inspection. '39 and '40 I was with the Pennsylvania Turnpike Commission. I was inspector on [525] tunnel work; '40-'41, Nantahala Power and Light Company, a subsidiary of the Aluminum Company of America, on a hydro project in North Carolina as assistant

(Testimony of Ramon E. Reed.)

resident engineer; '41 to '44, with Aluminum Company of America on construction of an aluminum smelter in Massena, New York, and buildings, in New Kensington, Pennsylvania; '45 to '52, with the Kenwise, Incorporated, a contractor, in Pittsburgh, Pennsylvania; '52 until the present—well, '52 until '54, I was on the Alcan Project in British Columbia; '55 I was on the Dew Line Construction with the Northern Construction Company—it is another subsidiary of Morrison-Knudsen Company, Northwest Territories, and the rest has been here at Richland.

Q. What connection did you have, Mr. Reed, with the particular project with which we are concerned here, the Hanford Works contract between Morrison-Knudsen Company and the Atomic Energy Commission?

A. I was project manager.

Q. What is the office or duties of a project manager on a project such as that?

A. To direct the work and see that the funds you spend are spent correctly.

Q. Are you the chief officer in charge of the project? A. Yes, sir.

Q. Will you state now when you first became connected with [526] that project and when you discontinued your connection with the project?

A. I arrived in Richland about the middle of December and left Richland the first day of April—that was December of 1955, and I left in April, April 1st, 1957.

(Testimony of Ramon E. Reed.)

Q. Was the project completed at the time you left in April of 1957?

A. Not quite, I think it was completed in May sometime.

Q. Shortly after your departure? A. Yes.

Q. Now, at the time that you first arrived at Richland in connection with this project in December of 1955, had the work upon the project already commenced?

A. There was some of our office people were there and a subcontractor, Irwin Construction, had started to move onto the project to do the excavation.

Q. Can you state for us, Mr. Reed, as of January 1, 1956, how many Teamsters were employed on that project?

A. I believe we had one Teamster. He was employed right at the end of December or just after the first. I believe there was one on that project there.

Q. And as of the same date of January 1, 1956, how many Operating Engineers were then employed? A. I believe we had one.

Q. Mr. Reed, as the project manager of the project for [527] Morrison-Knudsen Company, Inc., did you become acquainted with the fact that the Hanford Works Agreement, so-called, had been terminated?

A. You mean by the time I arrived?

Q. No, I just asked first if you became ac-

(Testimony of Ramon E. Reed.)

quainted with it. I will get to the time later. Were you acquainted with the fact that it had been terminated?

A. Would you please repeat that?

Q. The question was, did you become acquainted with the fact at some time that the Hanford Works Agreement had been terminated? A. Yes.

Q. Will you state how you became acquainted with that fact?

A. I received a copy of that December 29th letter.

Q. Was that letter signed by Mr. McCaffree?

A. Mr. McCaffree.

Q. And can you tell us approximately when it was received by you?

A. Oh, I would imagine it was sometime from the 29th, very shortly after the 29th, whenever it was mailed. I don't remember the exact date.

Q. Well, can we fix it in this way: You were in the courtroom yesterday when Mr. Knack testified of a meeting being held in Richland on the 5th of January, 1956. Was it received by you prior to the date of that meeting? [528]

A. I'm sure it was.

Q. Now, following the receipt of that notification that the Hanford Works Agreement had been terminated, under whose advice or by whose direction did you continue on the project to furnish bus transportation and isolation pay?

Mr. Etter: I will object to that; I don't think

(Testimony of Ramon E. Reed.)

that is material, has anything to do with this, who directed him to do what.

The Court: Well, I will overrule the objection.

Mr. DeGarmo: Well, I think it is material in that it shows the motive and reason for the furnishing of those benefits after the first of January.

A. The Atomic Energy Commission.

Q. The Atomic Energy Commission?

A. Yes.

Q. Was there some specific person in connection with the Atomic Energy Commission?

A. I believe it was Mr. Thurston, as I recall.

Q. Did you then continue after the first of January, 1956, Mr. Reed, to furnish bus transportation to the Teamsters and Operating Engineers for a period of time? A. Yes, sir.

Q. And did you continue to pay isolation pay for a period of time? [529] A. Yes, sir.

Q. Was there a time, Mr. Reed, when you ceased to furnish bus transportation and to pay isolation pay? A. Yes, sir.

Q. To your knowledge, Mr. Reed, were any negotiations being carried on concerning the matter of bus transportation and isolation pay between January 1, 1956, and the time when you have stated you ceased to furnish bus transportation and pay isolation pay?

A. Yes, I attended several meetings as an observer in which the Hanford Contractors were trying to negotiate an agreement up until—oh, I think

(Testimony of Ramon E. Reed.)

it was around March 8th. That was the last meeting I attended of any type.

Q. You say you attended as an observer?

A. Yes, sir.

Q. Where were those meetings held?

A. They were held in the Atomic Energy Commission's office. I don't remember what building it was.

Q. When was the date, Mr. Reed, that you ceased to furnish bus transportation and to pay isolation pay?

A. March 22nd was the last day that I paid isolation pay and bus transportation. That was previous to the strike.

Q. Had there been a termination of the furnishing of transportation and the payment of isolation pay by other contractors working on the project, working in the area [530] for the Atomic Energy Commission, prior to the time when Morrison-Knudsen Company ceased to furnish transportation and pay isolation pay?

A. Yes, sir, to my knowledge I was the only one that had the Teamsters and the Operators on the job that day.

Q. On the—— A. On the 22nd of March.

Q. On the 22nd, you were the only contractor?

A. Uh-huh.

Q. How did you learn that the others had ceased prior to that?

A. Well, I had a pour ready for concrete and

(Testimony of Ramon E. Reed.)

that is material, has anything to do with this, who directed him to do what.

The Court: Well, I will overrule the objection.

Mr. DeGarmo: Well, I think it is material in that it shows the motive and reason for the furnishing of those benefits after the first of January.

A. The Atomic Energy Commission.

Q. The Atomic Energy Commission?

A. Yes.

Q. Was there some specific person in connection with the Atomic Energy Commission?

A. I believe it was Mr. Thurston, as I recall.

Q. Did you then continue after the first of January, 1956, Mr. Reed, to furnish bus transportation to the Teamsters and Operating Engineers for a period of time?

A. Yes, sir.

Q. And did you continue to pay isolation pay for a period of time? [529]

A. Yes, sir.

Q. Was there a time, Mr. Reed, when you ceased to furnish bus transportation and to pay isolation pay?

A. Yes, sir.

Q. To your knowledge, Mr. Reed, were any negotiations being carried on concerning the matter of bus transportation and isolation pay between January 1, 1956, and the time when you have stated you ceased to furnish bus transportation and pay isolation pay?

A. Yes, I attended several meetings as an observer in which the Hanford Contractors were trying to negotiate an agreement up until—oh, I think

(Testimony of Ramon E. Reed.)

it was around March 8th. That was the last meeting I attended of any type.

Q. You say you attended as an observer?

A. Yes, sir.

Q. Where were those meetings held?

A. They were held in the Atomic Energy Commission's office. I don't remember what building it was.

Q. When was the date, Mr. Reed, that you ceased to furnish bus transportation and to pay isolation pay?

A. March 22nd was the last day that I paid isolation pay and bus transportation. That was previous to the strike.

Q. Had there been a termination of the furnishing of transportation and the payment of isolation pay by other contractors working on the project, working in the area [530] for the Atomic Energy Commission, prior to the time when Morrison-Knudsen Company ceased to furnish transportation and pay isolation pay?

A. Yes, sir, to my knowledge I was the only one that had the Teamsters and the Operators on the job that day.

Q. On the—— A. On the 22nd of March.

Q. On the 22nd, you were the only contractor?

A. Uh-huh.

Q. How did you learn that the others had ceased prior to that?

A. Well, I had a pour ready for concrete and

(Testimony of Ramon E. Reed.)

the concrete didn't show up and I started looking around to see what was the matter and found out no Teamsters on the job.

Q. When you ascertained that fact, what did you do?

A. Well, I think, as I recall, I jumped on the phone to Mr. Guess and asked him what the deal was.

Q. Did you find out? A. Yes.

Q. As of the 23rd, did you furnish transportation? A. No, sir.

Q. Did you have any conversation with representatives of the Teamsters or the Operating Engineers on the 22nd concerning the matter of continued furnishing of bus transportation and the payment of isolation pay? [531]

A. No, sir, our dealings were all with Mr. Guess, I didn't have any conversation at all with the local people.

Q. On the 23rd day of March, 1956, what Teamsters reported for work on your project?

A. Well, that time we had——

Q. Now, on the 23rd, I am asking you what reported on the 23rd? A. Oh. None.

Q. How many Teamsters were in the employ of Morrison-Knudsen Company on the 22nd and worked on the 22nd of March?

A. We had two I know of, I believe that was all. There might have been three, but I know there was two Teamsters.

(Testimony of Ramon E. Reed.)

Q. And approximately how many Operating Engineers were working and did work on the 22nd of March? A. I believe there was two.

Q. Did any of those show up for work on the following day, the 23rd? A. No, sir.

Q. Was there any other craft employed on that project by Morrison-Knudsen Company which failed to appear for work on the date of March 23rd? A. Yes, the Cement Finishers.

Q. Who is the business agent for the Cement Finishers, Mr. Reed? [532] A. Mr. Knapp.

Q. What contract, if any, did Morrison-Knudsen Company have as of the 22nd or 23rd of March, 1956, with the Cement Finishers?

A. None whatsoever.

Q. Mr. Reed, what pickets were there on the job or in connection with the approaches to the job on either the 22nd or the 23rd of March, 1956?

A. There were no pickets, the job was not picketed on those dates.

Q. When was the first date upon which pickets appeared? A. I believe it was April 5th.

Q. And where did the pickets appear?

A. The only one I am positive about is the one at the bridge at the entrance to Richland, to the city of Richland.

Q. Did you have opportunity to personally observe that picket?

A. Yes, I made a point to.

Q. Was the picket carrying any sign or placard?

(Testimony of Ramon E. Reed.)

A. There was a sign. He wasn't carrying anything, he was leaning against a car, there was a sign there.

Q. What did it say?

A. Oh, it said, "Hanford Contractors Unfair to Teamsters Union," such and such, "Operators Union" number such and [533] such, and "Cement Finishers." It may not have been in that order.

Q. The three unions were named?

A. Yes.

Q. Now, you have testified that neither the Teamsters nor the Operating Engineers appeared for work on the 23rd of March. Was the work available for them on that day? A. Yes, sir.

Q. When was the next date, Mr. Reed, if you can fix it, that either Teamsters or Operating Engineers appeared for work in connection with the Morrison-Knudsen Company projects?

A. Well, the strike was officially ended June 5th, but we didn't go back to work for about a week, around the 1st of the following week that we went back to work, on Monday of the week following the 5th.

Q. You say the strike was officially ended on the 5th of June; was there some event that signalled or marked the end of the strike?

A. I was advised by Mr. Guess that the strike was over. The pickets were taken down.

Q. The pickets were taken off at that time?

A. Uh-huh.

(Testimony of Ramon E. Reed.)

The Court: What date was that, did you say?

A. June 5th. [534]

The Court: June 5th?

Mr. DeGarmo: Yes. He testified that they did not actually resume work immediately afterwards, but the strike was officially ended at that time.

Q. Mr. Reed, from January 1st, 1956, until the time when you left the project in April of 1957, were payments made to the health and welfare fund of the Teamsters upon the wages of Teamsters employed on the project by Morrison-Knudsen Company, Inc.? A. Yes, sir.

Q. And under what contract were those payments made?

A. Associated General Contractors.

Q. And were payments made to the health and welfare fund of the Operating Engineers?

A. Yes, sir.

Q. From the period January 1, 1956, until the time you left the project in April of 1957, upon the wages of employee members of the Operating Engineers? A. Yes, sir.

Q. And under what contract were those payments made?

A. Associated General Contractors.

Q. To your knowledge, was there any other contract in effect between Morrison-Knudsen Company and either the Teamsters or Operating Engineers with any other health and welfare payments? [535]

A. No, sir, not that I know of.

(Testimony of Ramon E. Reed.)

Mr. DeGarmo: Might I have the court file, if your Honor please?

The Court: Yes.

Mr. DeGarmo: There is a document attached to one of the requests for admission that I wish to examine the witness concerning.

(File handed to Mr. DeGarmo.)

Q. Mr. Reed, I am showing you a document which is attached as Exhibit G to Plaintiff's Request for Admissions under Rule 36, the original of which was filed in this cause, on January 17, 1957, and I wish to ask you if you will examine both Exhibit G and Exhibit H and state if you have previously seen the originals of which those appear to be photostatic copies or purport to be photostatic copies? A. Yes, sir.

Q. Will you state the circumstances under which you saw them?

A. They were left at our office in the hands of Mr. Ralph Nelson, our office manager, by Mr. Griffin of the Teamsters. That is what he told me.

Q. I notice that this purports to be—referring to Exhibit G—purports to be an agreement dated 14 November, 1956, between University Plumbing and Heating Company and the [536] International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. What relationship, if any, did University Plumbing and Heating Company have to your job as Morrison-Knudsen Com-

(Testimony of Ramon E. Reed.)

pany under your contract with the Atomic Energy Commission?

A. They were our subcontractors on the installation of piping on this contract that we had.

Q. What did you do with these two documents after they came to your attention?

A. They were passed on to University Plumbing and Heating.

Mr. DeGarmo: In order that these might have some significance to the Court, I will just explain briefly that they are agreements providing for compliance by the University Plumbing and Heating with the Associated General Contractors' agreement with respect to health and welfare fund.

Q. As I understand it, Mr. Reed, you have no personal knowledge as to whether those were executed by the University Plumbing and Heating or not?

A. No, sir, I do not have.

Mr. DeGarmo: You may examine, Mr. Etter.

Cross-Examination

By Mr. Etter:

Q. Mr. Reed, you were doing some work, either directly or [537] through a subcontractor by the name of Irwin, on your project, were you not, in November and December of 1955?

A. The latter part of December.

Q. Latter part of December. And isn't it a fact that there were from four to eight Operating Engineers that were engaged on that project on the excavation part of it during that time?

(Testimony of Ramon E. Reed.)

A. I cannot tell you because I was not cleared to the area and I made one visit to the area before the middle of January, took me five weeks to get cleared into the area.

Q. And you knew there were several Teamsters along with the Operating Engineers that were working on that excavation project?

A. I knew there must be Operators and Teamsters out there, but how many, Mr. Etter, I did not know.

Q. That's right. So you are not meaning, I'm sure, to convey to us that there were only one of each there that had worked on that project when you were there?

A. They were on our own payroll.

Q. That's right. And Mr. Irwin wasn't in any different position than University Plumbing with this exhibit that has just been shown, he was a subcontractor of yours, wasn't he? [538]

A. Yes, sir, he was.

Q. And, I gather, was doing excavation work?

A. That is correct.

Q. That's correct. And was a sub, I understand, if you know, to the Hanford agreements providing isolation pay and so forth?

A. That is correct.

Q. Now, were you at a meeting on January, the 15th at the labor hall?

A. Yes, sir.

Q. In company with Mr. Knack?

A. Yes, sir.

(Testimony of Ramon E. Reed.)

Q. Are you acquainted with Mr. Knapp, Charles Knapp, who is seated here at my right?

A. Yes, sir.

Q. Do you recall at that meeting Mr. Knapp, in the presence of numerous men that were there—are you acquainted with Mr. Ed Clarey?

A. I have met Mr. Clarey, uh-huh.

Q. With Mr. King of the Millwrights?

A. Yes, I know Mr. King.

Q. With Mr. Lewis of the Teamsters?

A. Yes, I know Mr. Lewis.

Q. Mr. Rossman, who is seated here?

A. Yes, sir. [539]

Q. Mr. William Dunn of the Engineers?

A. Yes, sir.

Q. Do you recall whether those men were at that meeting on January 5th?

Mr. DeGarmo: Just a minute, Mr. Reed.

I don't wish to make technical objections, but I think this is not proper cross-examination inasmuch as I did not touch the meeting, this particular meeting, with this witness. I know what counsel wants, he probably would want that evidence in his own case, but I don't think it is proper cross-examination.

Mr. Etter: I thought you went into meetings, but you let this one go by and didn't examine about it.

Mr. DeGarmo: I didn't go into the meetings.

The Court: No.

(Testimony of Ramon E. Reed.)

Mr. DeGarmo: Probably will come out eventually but I——

The Court: I think I will permit him to examine the witness while he is on the stand.

Mr. Etter: Otherwise, I will hold him here and call him back. I thought he had.

Q. In any event, do you recall being at the meeting? A. Oh, yes.

The Court: Pardon me, what is the date? [540]

Mr. Etter: January 5th, the afternoon of January 5th.

The Court: Oh, yes, I see.

Mr. Etter: 1956.

Q. Do you recall that at that meeting Mr. Knapp said, in substance and effect, to Mr. Knack—we have got two pretty close ones, Knapp and Knack—Mr. Knapp said to Mr. Knack, in substance and effect, “We are interested in knowing what the situation is going to be,” or words to that effect, “under our employment relationship,” and to that effect, something said of that nature? Do you recall that? A. There was a discussion.

Q. Yes. Do you recall that then Mr. Knapp said to Mr. Knack, “We want to know and our people want to know whether or not your company is going to abide with the Hanford Agreement and pay isolation pay and continue bus transportation”?

Mr. DeGarmo: Just a minute——

Q. (By Mr. Etter): Do you remember that?

Mr. DeGarmo: Just a minute, Mr. Reed.

In order to preserve the record, if your Honor

(Testimony of Ramon E. Reed.)

please, I wish to show an objection to this line of questioning upon the ground that it is an attempt, apparently, by the defendants to show some oral agreement [541] relating to the time involved in this litigation which has not been pleaded as an affirmative defense or relied upon and is contrary to the admission as made in their answers to requests for admission.

The Court: The record may show that your objection goes to the whole line of testimony without repeating it.

Mr. Etter: May I proceed, your Honor?

The Court: Yes.

A. I remember some discussion along those lines, but the exact wording, I do not remember.

Q. (By Mr. Etter): Well, do you remember that Mr. Knack said then to Mr. Knapp and to Mr. Dunn and these men who were talking with him at this meeting, in words in substance and effect as follows: "We bid this job under the Hanford Agreement, that provided isolation pay and bus transportation, and we are going to complete the job under those conditions or that agreement"?"

A. I could not say that I remembered that.

Q. You couldn't say you remember?

A. No, sir.

Q. Did you hear that discussion?

A. There was a discussion along those lines, but I cannot swear——

Q. You don't remember just what Mr. Knack did say? [542]

A. No, sir, I do not.

(Testimony of Ramon E. Reed.)

Q. Is that correct? A. That is correct.

Q. All right. Now, as I gather it, it is your understanding that the strike or the work stoppage—we prefer to call it lockout—ended in June, is that right?

A. The pickets were removed on June 5th.

Q. Of '56? A. Uh-huh.

Q. You, of course, did not have any Engineers employed on the particular part of your project until August, isn't that correct?

A. No, sir, that is not correct.

Q. All right, when did you have any Engineers of Local 370 working back on your particular project after the dispute terminated in part?

A. I cannot tell you without looking at our payroll.

Q. It wasn't in June, was it?

A. I remember we brought a crane in and it may have been the latter part of June, I don't remember, Mr. Etter.

Q. Well, as a matter of fact—

A. It was the latter part of June, anyway.

Q. Excuse me. As a matter of fact, during a considerable interval between March and June, you people had taken [543] your machinery down to California, isn't that right? A. No, sir.

Q. You had taken none of the machinery that operated by Engineers?

A. Not to California.

Q. Well, had you moved it out to other projects?

A. Oh, yes.

(Testimony of Ramon E. Reed.)

Mr. DeGarmo: It seems to me, if your Honor please, we are getting into the question of damages now rather than the question of breach of contract.

Mr. Etter: I am just asking, I am trying to fix a date here. He says they came back to work in June.

The Court: I will overrule the objection.

Q. (By Mr. Etter): But I mean you had moved the machinery out to other projects?

A. We had removed some, yes.

Q. And it is fair to assume that you brought these men back to work when you had the machinery available, whenever that date was?

A. What men?

Q. Engineers? A. Yes, sir.

Mr. Etter: That is all.

Mr. DeGarmo: That is all, Mr. Reed. [544]

* * *

Cross-Examination

By Mr. Carey:

Q. Mr. Reed, a few moments ago you will recall that Mr. DeGarmo showed you a photostatic copy of a document which concerned the University Plumbing and Heating Company?

A. Yes, sir.

Q. And he referred to the original file. I am now showing you my file, but I think you will recognize it is another photostatic copy.

A. Yes, uh-huh.

(Testimony of Ramon E. Reed.)

Q. I notice it is dated November 14, 1956? [545]

A. Yes, sir.

Q. And at that time the University Plumbing and Heating Company was doing some work for you?

A. Yes, sir.

Q. Now, the work stoppage or strike or lockout, whichever it was, had ceased in June of 1956, hadn't it?

A. That is correct.

Q. Some five months prior to the date of this document?

A. Yes, that's right.

Q. That's right, isn't it?

A. Yes.

Q. So that at the time of the controversy, difference of opinion, or whatever you want to call it, this document was not in effect, was it?

A. That is correct.

Q. Do you recall how long the University Plumbing and Heating Company was on that job as your subcontractor?

A. They were on right through the entire——

Q. Pardon?

A. They were on it during the entire length of the contract.

Q. I noticed it says down here, "Payment for the plan becomes effective December 1st, 1956, for all hours worked by Teamster personnel previously to November, 1956." By that time, everything was peaceable and the [546] controversy was settled for everything but a lawsuit, wasn't it?

A. Well, I don't know whether it was ever peaceful out there, but, yes, it was.

Q. That's right. All right. Now, do you know

(Testimony of Ramon E. Reed.)

how many Teamsters employed by the University Plumbing and Heating Company were employed by that concern as your subcontractor?

A. What period?

Q. During the period covered by this document, whatever that period is? A. One.

Q. One. Now, that particular teamster worked inside, or drove a truck, or drove something, both inside and outside the Atomic Energy area, didn't he? A. Yes, he drove a bus.

Q. Yes. Both inside and outside?

A. Yes.

Mr. Carey: That is all.

The Court: Any other questions?

Mr. DeGarmo: That is all, Mr. Reed.

The Court: That is all. Court will recess for ten minutes.

(Witness excused.) [547]

Mr. DeGarmo: If your Honor please, there is one further feature of the case upon which I wish to offer proof before resting the plaintiff's case in chief.

I believe that I am able to stipulate with Mr. Carey, on behalf of the Teamsters, that the failure of the men to report for work on March the 23rd after the failure to furnish bus transportation was with the knowledge and approval of the local union officials of the Teamsters. That is the Teamsters only.

Mr. Carey: That is correct. I am speaking, you

understand, now only for the Teamsters, not for the Engineers.

The Court: I understand that, yes, and for the Teamsters Local, of course, they are the only ones.

Mr. Carey: That's right, the Teamsters Local.

Mr. DeGarmo: That's right. I have not been able to stipulate with the Operating Engineers and I wish to call Mr. Arthur Rossman to the stand.

The Court: All right.

ARTHUR A. ROSSMAN

called and sworn as a witness by the plaintiff, was examined and testified as follows: [548]

Direct Examination

By Mr. DeGarmo:

Q. Your name is Arthur A. Rossman?

A. That's right.

Q. And where do you reside, Mr. Rossman?

A. In Spokane.

Q. And what is your business or occupation?

A. I am business manager for Engineers, Local 370.

Mr. DeGarmo: I wish to state, if your Honor please, that I am calling Mr. Rossman as an adverse witness.

The Court: All right.

Q. (By Mr. DeGarmo): As business manager for Local 370 of the International Union of Operating Engineers, did you hold a similar position in 1955? A. Yes, sir.

(Testimony of Arthur A. Rossman.)

Q. And also during the year 1956?

A. Yes, sir.

Q. You were its business manager then on March 22nd and March 23rd of 1956? A. Yes, sir.

Q. Mr. Rossman, as business manager of the International Union of Operating Engineers, were you advised on the 22nd of March, 1956, that bus transportation and isolation [549] pay had been discontinued by certain of the contractors doing business in the Hanford Works area with the Atomic Energy Commission?

A. Was I informed?

Q. Yes, sir.

A. Yes, by telephone that day.

Q. As a matter of fact, Mr. Rossman, you had been advised at a meeting held on the 19th of March by Mr. Guess, that the furnishing of bus transportation and the payment of isolation pay would cease as of the 19th, had you not?

A. I don't recall, but I believe so.

Q. Do you recall that at a meeting on the 19th you were advised that an extension——

A. Mr. DeGarmo, if I may, I was informed that bus transportation and isolation pay were going to be discontinued. I am not sure that the date was stated.

Q. You do not recall the date of March 19th as the specific date which was fixed then, is that true, Mr. Rossman?

A. That's right, not without referring to minutes or records.

(Testimony of Arthur A. Rossman.)

Q. Well, do you have minutes or records which would refresh your recollection as to that statement?

A. I am not sure of that as to that particular meeting. I [550] have minutes of numerous meetings.

Q. Well, do you have minutes available with you in court here which would——

A. Have some meetings.

Q. ——refresh your recollection? Well, will you see if you have minutes of a meeting of March 19th? First, of a meeting of March 10, 1956?

A. Did you want me to go down, Mr. DeGarmo?

Q. Yes, if you will. I assume that you can better than anyone else.

(Witness complies.)

A. I don't have minutes of that meeting of March 19th. Mr. Hollingsworth is the secretary, I just consulted with him, and he wasn't present at that meeting and he keeps the minutes, not I.

Q. I see. You are not in the custom of keeping minutes, is that right?

A. That's right. He does when he is present.

Q. Well, Mr. Rossman, do you recall attending a meeting in Spokane, Washington, on the 21st day of March, 1956?

A. Could you help by telling me where it was and who attended it?

Q. Yes, sir. A. The dates?

Q. This was a meeting held at the Associated General [551] Contractors' office in Spokane. There

(Testimony of Arthur A. Rossman.)

were present Mr. Peterson and Mr. Zeman on behalf of the Federal Mediation and Conciliation Service; Mr. Charles Knapp on behalf of the Cement Finishers; Mr. Davis on behalf of the Teamsters; Mr. Sather, Mr. Helvey, Mr. Guess and Mr. Carbon on behalf of the A.G.C. chapters; Mr. Rossman and Mr. Dunn on behalf of the Operating Engineers; Mr. McReynolds and Mr. McCaffree on behalf of J. A. Jones Company.

A. I was at that meeting.

Q. That brings it back, rings a bell?

A. That's right.

Q. Do you recall, Mr. Rossman, that at that meeting it was stated to you that there would be no bus transportation furnished unless you were willing to arbitrate the matter of the bus transportation and the isolation pay under the grievance procedure of the A.G.C. contract and agree to that at that time, that there would be no bus transportation furnished the following day, nor would there be any isolation pay for your members, the A.G.C. agreements would be put in strict effect at that time?

A. I recall that that was a proposition made to me, to which I did not agree.

Q. Well, I am not asking if you agreed, I assume you didn't, but I am asking if that was the statement which [552] was made to you?

A. I believe so.

Q. Then on the 22nd, you have stated that you do know that certain of the contractors did not furnish bus transportation or isolation pay, is that

(Testimony of Arthur A. Rossman.)

correct? A. Yes, sir.

Q. And did the members of your local chapter report for work to those contractors on that date?

A. On the morning of the 22nd?

Q. Yes.

A. Yes, to the bus terminal or to the parking lot.

Q. Did they go any farther than the parking lot?

A. When the busses weren't there, they went back home.

Q. You were aware of that fact?

A. Afterwards.

Q. Well, how long afterwards?

A. Within an hour or two.

Q. Did all of the members of the Operating Engineers ride the bus from Richland to the job site?

A. No.

Q. There were many of your members who used their private automobiles, isn't that correct?

A. I don't know how many, some did, yes.

Q. Well, you know, as a matter of fact, don't you, Mr. Rossman, that not any of the members, whether they rode [553] busses customarily or whether they drove their own automobiles, reported for work on that morning of March 22nd, isn't that correct?

A. I don't believe any of them drove their cars beyond the barricade.

Q. At any time?

A. Prior to that, I don't think so. I can't be sure

(Testimony of Arthur A. Rossman.)

of that. Correction, I believe they did to certain close-in areas.

Q. Well, even those members didn't report on the 22nd, did they?

A. They all reported on the 22nd.

Q. But to the——

A. I say all, substantially all of them.

Q. Out to the bus area?

A. That's right.

Q. Is where they reported?

A. That's right.

Q. Had you had any communication with your members after this meeting in Spokane on the 21st of March? A. No.

Q. You made no report to them of any kind as to the transactions which occurred at this meeting in Spokane on March 21st?

A. The day before the work stoppage, no. [554]

Q. When did you report to them?

A. Within the week prior to the work stoppage, I went down and held a meeting, a special notified meeting, of the members employed on the project and related to them an offer that had been made by the contractors for their acceptance or rejection and put it to a secret ballot at the meeting, and it was voted down unanimously, and at that meeting I urged them to continue work, that the matter was still in dispute, and I would try to negotiate a suitable settlement for them.

Q. What was the date of that meeting, Mr. Rossman, if you can give it to me?

A. I don't know the exact date; I think it was

(Testimony of Arthur A. Rossman.)

within a week, within the week, prior to the 22nd of March, I'm not sure.

Q. Well, now, at the meeting on March 21st in Spokane, you stated, did you not, that you would like another opportunity to submit the matter to your people as to whether they should arbitrate this matter rather than strike, isn't that correct?

A. I believe so.

Q. Did you submit it to them?

A. I wasn't given time.

Q. In what way? [555]

A. Well, on the day of the 21st, I had, I believe, 66 members employed there. They have to be notified by postcard. They live at Yakima, Prosser, Richland, Pasco, Kennewick. That takes a matter of a couple of days to get notice to them of a meeting. I have had meetings notified by word of mouth, but the time was too short, as I recall it. If it was on the 21st, I wouldn't have time to have a meeting that same evening, I don't think.

Q. Were you familiar with the fact, Mr. Rossman, that the members of the local union of which you are business agent did not report for work on the Morrison-Knudsen Company job on the 23rd, the morning of the 23rd of March, 1956?

A. Yes.

Q. Had you been advised by anyone on the 22nd that the Morrison-Knudsen Company, which had apparently continued one day beyond the others, would discontinue bus transportation the following day?

(Testimony of Arthur A. Rossman.)

A. I don't know, I know I think there was one employee for Morrison-Knudsen that we had, worked one day beyond the time the others stopped work for the other contractors.

Q. Well, my question is whether you were advised by anyone that Morrison-Knudsen Company, although it furnished bus transportation on the 22nd, would not continue beyond [556] that date?

A. Yes, my field representatives advised me of those things as a matter of course.

Q. And they advised you of that on the 22nd, did they not, the day before the bus transportation was not furnished? A. No.

Q. When did you learn of it?

A. I think it was some several days later before I found out that Morrison-Knudsen worked one day beyond the date the other contractors did.

Q. Mr. Rossman, did you receive a letter from Mr. Guess on or about the 23rd day of March, 1956, concerning the fact that the members of your Union were not reporting for work?

A. I received a letter from him; I don't know what the date of it was.

Mr. DeGarmo: Will you mark that as an exhibit, please?

The Clerk: Marked as Plaintiff's 8, your Honor.

The Witness: What is the date?

Mr. DeGarmo: I may have misspoken the date of this letter. It is March 30th, not March 22nd.

Q. I am handing you Plaintiff's Exhibit 8 for identification. Will you examine that and state if

(Testimony of Arthur A. Rossman.)

you recall [557] whether that is a copy of the letter which you received from Mr. Guess?

A. Yes, I received that letter. I had the original in my files.

Mr. DeGarmo: Will you also mark that, please?

The Clerk: I am marking Plaintiff's 9, your Honor.

Q. (By Mr. DeGarmo): We seem to have a question between us, Mr. Rossman. I want to ask you a direct question on the matter.

When, Mr. Rossman, do you say that the refusal or failure, whatever you want to call it, of the members of your union to report for work for Morrison-Knudsen Company, Inc., on their contract with the Atomic Energy Commission was with the consent and approval of the officers of Local 370?

A. If the date is correct, the 5th or 6th of April, when pickets were placed on the job. There were no pickets from the 22nd of March until either the 5th or 6th of April.

Q. I am handing you a letter, Mr. Rossman, dated April 3rd, 1956. Will you state if that is a letter which you wrote to Mr. Guess in response to his letter to you of March 30th, which is Plaintiff's Exhibit 8 for identification? [558]

A. Yes, sir, it bears my signature, I guess I——

Q. Will you state if any place in this letter which you have before you you stated that this failure to report for work was without your knowledge or without your consent or contrary to your instructions?

(Testimony of Arthur A. Rossman.)

Mr. Etter: The letter speaks for itself.

Mr. DeGarmo: I think it does, I will read it to the Court.

Mr. Etter: Go ahead.

Mr. DeGarmo: I offer the two exhibits.

The Court: That has been identified?

Mr. DeGarmo: Yes.

The Court: Let's see, has it been offered in evidence yet?

Mr. DeGarmo: I am offering both letters at this time.

Mr. Etter: No objection.

The Court: All right, they will be admitted, then.

The Clerk: That is the Plaintiff's 8 and 9, your Honor.

The Court: 8 and 9.

(Whereupon, the said letters were admitted in evidence as Plaintiff's Exhibits Nos. 8 and 9.) [559]

Mr. DeGarmo: The letter of March 30th, if your Honor please, is addressed to Mr. Art Rossman, Operating Engineers Local Union 370, 325 South Browne Street—

The Court: Is that number 8 or 9?

Mr. DeGarmo: This is number 8.

The Court: All right.

Mr. DeGarmo: Your Honor might prefer to read them yourself.

(Testimony of Arthur A. Rossman.)

The Court: No, you may read them. Is that March 30th?

Mr. DeGarmo: This is March 30th, 1956.

The Court: All right.

Mr. DeGarmo: Addressed to Mr. Art Rossman, Operating Engineers Local Union 370, 325 South Browne Street, Spokane, Washington.

“Dear Sir:

“On Thursday, March 22, 1956, your local union at Pasco, Washington, refused to furnish employees to the Morrison-Knudsen Company, a firm whose bargaining rights are held by Spokane Chapter, Associated General Contractors.

“I desire to point out several clauses of our existing agreement which have been violated: [560]

“Article VIII—No Strike-No Lockout. It is mutually agreed there shall be no strikes, lockouts or other slow downs or cessation of work authorized by either party on account of any labor differences pending full utilization of the grievance machinery set up in Article IX. Parenthetically I add that the Building Trades Council of Pasco refused to vote you a picket line.

“Article X—Settlement of Disputes and Grievances (a method is hereby provided). You are requested to give me an answer within the 48 hours provided.

“Article XI—Territory and Work Covered. This Agreement shall cover all Heavy, Highway and Engineering work in—Benton County—It is the Spo-

(Testimony of Arthur A. Rossman.)

kane Chapters' contention that the work is 'Engineering' and that it lies in Benton County.

"Travel Pay Zone Map. The travel pay zone map is all inclusive of the area in question. There are no exclusions.

"Very truly yours,

"SAM C. GUESS,

"Executive Secretary." [561]

The letter in reply, Plaintiff's Exhibit 9, dated April 3, 1956, is on the letterhead of International Union of Operating Engineers, Local Unions, 370, 370-A, 370-B, 370-D:

"Mr. Sam C. Guess,

"Executive Secretary,

"Associated General Contractors of America, Inc.,
Spokane Chapter,

"South 102 Stevens Street,

"Spokane 4, Washington.

"Dear Sir:

"In reply to your letter of March 30, 1956, I wish to state that I am still of the opinion frequently stated by me since the work stoppage of March 20, that there is no valid collective bargaining agreement in effect on the Hanford Works Project. My opinion is now supported by legal opinion. The opinion is based on the following facts:

"At negotiations held with the Spokane Chapter AGC on November 3, 1955, at which the contractors were represented by Dewey Murrow, Sam Guess, Frank Winslow, Mr. Sather and Neal Deger-

(Testimony of Arthur A. Rossman.)

strom, and the union represented by A. A. Rossman and R. L. Hollingsworth, the status of the Hanford Project was discussed. It was the undisputed opinion of both committees at that time that the Hanford Works Project could not [562] or would not be covered by an area agreement. Again on December 15 at a meeting with the Builders Chapter of the Associated General Contractors and representatives of Local 370, the Hanford Project was discussed and the same conclusion was reached.

“On December 15, 1955, at a time when negotiations between Local Union 370 and the Spokane Chapter, Associated General Contractors, were in progress, an offer was made by the Hanford Contractors Negotiating Committee, which provided among other things, the following:

“(1) The agreement between the particular contractor association and the respective local union or unions which is applicable for the jurisdiction of the craft or crafts on the type of construction involved and which constitutes the prevailing agreement on nongovernmental construction work in the territory surrounding the Hanford Project shall become effective on January 1, 1956, for corresponding work on the Hanford Project, except that [563]

“(a) those provisions pertaining to or providing for travel time, travel pay, transportation and/or subsistence or other allowances or provisions relating to these items shall not apply until July 1, 1956, and that

“(b) those provisions shall be modified wherein

(Testimony of Arthur A. Rossman.)

it is not already provided in the applicable individual union association area agreement, to use Richland, Washington, as the point for computation travel time, travel pay, transportation and/or subsistence or other allowances relating to these items.

“Morrison-Knudsen Company was represented, or at least had an observer on the Contractors Committee at that time.

“On December 29, 1955, the Hanford Contractors Negotiating Committee by letter cancelled the old Hanford Works agreement without having negotiated any agreement to replace it.

“In three subsequent settlement proposals made at various dates after January 1, 1956, [564] the Hanford Contractors Negotiating Committee made offers of settlement outside the scope of the AGC-Operating Engineers area agreement.

“On March 9, 1956, the Hanford Contractors Negotiating Committee by letter assigned their bargaining rights to the Spokane Chapters of the Associated General Contractors, and in the only settlement proposal offered by the Spokane Chapters Joint Labor Committee, a settlement offer was made also beyond the scope of the existing area agreement.

“In conclusion it would seem that no one, not even the several Contractors Negotiating Committees, made any attempt to apply the area Engineers-AGC agreement to the Hanford Project as written. Certainly had I felt at any time that an agreement providing for arbitration was effective on the Proj-

(Testimony of Arthur A. Rossman.)

ect, I would live up to the letter of the contract regardless of the opinion of the members I represent and who are employed on the Project.

“Very truly yours,

“ARTHUR A. ROSSMAN,

“Business Manager,

“Local No. 370.

“P.S. With reference to Paragraph (b) on Page 2, [565] at no time during any of the negotiations with either Chapter of the AGC was Richland, Washington, even remotely considered as a dispatch point for the computation of travel pay.”

Q. Now, Mr. Rossman, you say that you didn't, and this was your testimony, that April 5th was the date upon which you considered that the work stoppage or failure to report for work was with the approval and consent of the officers of your union, is that still your testimony?

A. Yes. The work stoppage was there and out of my control. It was spontaneous on the part of the members, I hadn't sanctioned it.

Q. Did you tell them to go back to work?

A. No, I asked them to stay at work before they left the job.

Q. Yes, but after they left the job and you knew that they had left the job, did you ask them to go back to work? A. I don't believe so.

Q. Isn't it a fact, Mr. Rossman, that prior to March 30th, the date that Mr. Guess wrote you a letter, your local had preferred an unfair labor

(Testimony of Arthur A. Rossman.)

charge before the Pasco-Kennewick Building Trades Council against Morrison-Knudsen Company? [566]

A. Well, I don't believe the Building Trades Council entertains unfair labor practice charges.

Q. Well, did you prefer a charge against them of unfair to labor, if you want to put it that way?

A. I believe it is customary to take a dispute before the appropriate labor council when there is a work stoppage. I presume I did.

Q. That was done after the work stoppage occurred, was it not, and prior to March 30th?

A. Very probably.

Q. Was that done with your approval and, in fact, by you?

A. I don't remember whether I did it or whether my representative down there, Bill Dunn, did, but that is a matter of procedure in work stoppages.

Q. Well, were you acting for the local or was Mr. Dunn acting for the local and its members when that was done?

A. Yes, one or the other of us. We didn't get prior strike sanction from the Building Trades Council because we didn't know there was going to be a work stoppage, and I still contend it wasn't a strike, it was a lockout, when the busses weren't there as they had customarily been since 1943.

Q. Oh, I see. Your position is that the contractors locked your union members out when they refused to furnish busses? Is that your position? [567]

A. That's right, there was no way for lots of them to get to work when the busses weren't there.

(Testimony of Arthur A. Rossman.)

Q. You know it was permissible to drive private cars within the area at that time, was it not, Mr. Rossman? A. Yes, to certain areas.

Q. Well, to this particular area where the Morrison-Knudsen Company work was being performed? A. Yes.

Q. Yes, sir. And there was no prohibition against their taking their private cars in there if they wished to report for work?

A. I don't believe so.

Q. When did you first tell your workers to go back to work in this area?

A. I think it is documented by telegram when the Ching Panel made their recommendation.

Q. I take it, then, that during that period of time, at least from April 5th on, they were staying out with your concurrence and approval and that of your local? A. Yes.

Mr. DeGarmo: I have no further questions.

The Court: Any cross?

Mr. Etter: No.

The Court: Any questions? That is all, then, Mr. Rossman. [568]

(Witness excused.)

Mr. DeGarmo: I think that completes the plaintiff's case in chief.

The Court: All right.

Mr. DeGarmo: On this feature of the case, if your Honor please.

The Court: Mr. Carey?

Mr. Carey: At this time, if the Court please, plaintiff having rested, on behalf of Teamsters Local 839, I move to dismiss the action upon the following grounds:

First, that the labor contract dated December 19, 1955, effective, as I recall, as of January 1st, 1956, copy of which is in evidence as Exhibit 2, is not shown to have been applicable to work within the Hanford Area, but on the contrary is shown to be work not applicable to that area. And, secondly, that in any event, Morrison-Knudsen Company, Inc., as plaintiff, may not maintain an action for breach of that contract signed only by Associated General Contractors and not signed by the plaintiff Morrison-Knudsen.

Mr. Etter: I will join in that motion on both grounds, with the possible further amplification or statement that I think he mentioned but I want to be sure it is in there, that the plaintiff here is not a [569] signatory party to the collective bargaining agreement involved and upon which the action is brought and it therefore cannot maintain the action under the provisions of 29 U.S.C.A., Section 185 (a), upon which jurisdiction is asserted in this case, and that because of the foregoing, the Court has no jurisdiction. And I want to, with the Court's permission, present some argument at length not only with regard to a number of District Court cases, but with regard to developments in the determination of the substantive character of this statute just decided by the Supreme Court of the United States,

of the judge of the District of Arkansas who wrote the *Ketcher vs. Sheet Metal Workers* case, I wouldn't expect him to take me too seriously unless my reasoning on which my decision or opinion was based appealed to him and he felt that the reasoning and the logic were sound.

The *Ketcher* case and the dicta and the language in other decisions which have been cited here, such as [620] the *Square D vs. Electrical Workers* in 123 F. Supp. 776, is based upon the assumption that, because individual members of a labor union may not be sued in Federal Court under Section 185(a), and from that it follows that the individual members may not maintain suits for violation of labor contracts under Section 185(a), that therefore it follows that employers who belong to and act through an association, unless they directly contract with the labor union, may not maintain a suit under this section. That is the reasoning of the *Ketcher* case. The judge there says that he can't see any difference between the situation of the individual members of a union and the individual members of an employers association. If an individual workman may not maintain the action, then the individual employer may not maintain the action if he acts through and was represented by an association.

It seems to me that this is not a proper construction of the statute and overlooks what Mr. DeGarmo brought out in his argument here, the history and purpose of it in one respect, and that is to enable the courts to take jurisdiction of and to decide a case

for breach of contract against a labor union, which is an unincorporated association as a rule, at any rate, and could not be sued at common law. The language of [621] 185(a) which is the basis of jurisdiction of the District Courts, of course, gives jurisdiction to the courts to entertain suits or to decide suits for violation of contracts between an employer on the one hand and a labor union representing employees on the other. That is the basis upon which the court may take jurisdiction, an employer on the one hand and the labor organization representing employees on the other. That language implies that it is not the individual employees who are to maintain the action or sue or be sued, but it is the organization, but on the other hand it is the employer, and this argument that it would greatly add to the burdens of the District Courts, I can't see where that is a sound conclusion. Certainly, it would greatly increase the number of suits that could be brought if the individual members of a union running into thousands could each bring suits for violation of a contract made in their behalf by their union, but on the other hand it doesn't make any difference how many members there may be in a particular association, such as this Associated General Contractors, whether it has ten, whether it has forty, whether it has fifty, the only member who can bring the action is the employer party to a particular contract as to which it is claimed there is a breach. [622]

So that whether the employers act directly in contracting or act through an association, you won't

have any more lawsuits, you would simply have those lawsuits in which there was a claim by the employer that the labor contract had been breached and the suit was brought by the employer.

I can't see where there is any requirement in this language, or any prohibition, I should put it, against an employer acting through an agent. It has been a good many years since I was in law school, but I remember Professor Goodner used to drum into us the Latin maxim—my pronunciation may not be the best—but *qui facit per alium facit per se*—what one does through another he does himself—and certainly would anyone maintain if Morrison-Knudsen or any other employer executed a power of attorney authorizing John Smith, Bill Jones, or the Associated General Contractors to execute labor contracts for Morrison-Knudsen, that that couldn't be done under this section, that a contract couldn't be made in that way? And it seems to me here that, while it hasn't been done in that formal manner, that there is clearly an agency relationship here and it is not disputed that there is an agency relationship where the Association undertakes to act as an agent for the individual member employers. [623]

And it seems to me, too, that I see no reason why the third party beneficiary principle should not apply to this situation, although I don't think it is necessary to pass upon that point because I think there is an agency relationship here which would bring it within the statute.

Now, that is my opinion. The learned judge from the District of Arkansas, who is an older man than

I am, and who is 73—I haven't reached that ripe age—he has more years on the bench, perhaps he is right and I am wrong, but, of course, his opinion is only persuasive and in the final analysis, of course, if it gets that far, the controlling thing will be what the Ninth Circuit Court of Appeals thinks about this and the way in which the Ninth Circuit Court of Appeals views it. I think that they would have the same view that I have, but I am not basing my opinion on that because I have to decide things as I see them and let somebody else who has the last say say otherwise if they choose.

So that I think the motion should be denied and we will proceed with the defendants' case.

Mr. Etter: Your Honor, for the record, and also hoping that your Honor looks with favor on it, I should like leave to make a motion to amend the answer [624] to the amended complaint by adding to the affirmative defense which was pleaded and move, of course, for the reinstatement of the affirmative defense as pleaded with the amendment which I would like to read to your Honor.

The Court: All right.

Mr. Etter: (Reading:)

“On November 25th, 1955, the plaintiff entered into a contract with the United States Atomic Energy Commission for the construction of certain facilities wholly within the limits of the said area above described acquired by the United States for purposes of national defense, and on or about November 28th, 1955, it commenced the performance

of said work. To perform the work it had to do under said contract, it became necessary that plaintiff employ members of said local unions 839 and 370. For many years prior to the commencement of that work, there had been in full force and effect a certain labor contract negotiated by said Hanford Contractors Negotiating Committee defining the terms and conditions applicable to work within said area, including provisions [625] that the workmen, in addition to stipulated hourly wages, should be paid an additional amount known as 'isolation pay' and should also be furnished bus transportation to and from their particular places of employment within the Hanford area.

"At the time of the commencement of the work, plaintiff agreed with defendant locals 839 and 370 that said Hanford contract should apply to said job until completed and, although termination notice of said contract was made on December 29th, the terms of said contract were applied until after March 20, 1956.

"Beginning about March 8, 1956, the plaintiff sought to apply to said work the provisions of certain other contracts, namely, Exhibits A and B attached to the plaintiff's original complaint, both less favorable to defendants' members; that on or about March 22nd, 1956, the plaintiff definitely refused to abide by commitments and the work stoppage described in the amended complaint occurred and continued until June 6, 1956, when work under the original conditions, including [626] 'isolation pay' and free bus transportation, was resumed.

“The loss, if any, sustained by plaintiff was caused solely by its said refusal to abide by its commitments relating to the payment of ‘isolation pay’ and the furnishing of bus transportation.”

Now, as I gathered your Honor’s ruling yesterday, the Court, although adhering to its original ruling, did hold that we might introduce evidence showing under what arrangement these men were working at the time of the commencement of the Morrison-Knudsen job and facts thereafter, but nothing that would go, as I understood it, to the attempt to vary the two agreements in question by parol.

The Court: Mr. DeGarmo?

Mr. DeGarmo: Well, it was a little difficult for me, your Honor, in view of the length of the amendment, to follow it. Counsel has not seen fit to type out or furnish me with a copy of it. However, the general import of it, as I understand it, is to attempt to reinstate the portions of the affirmative defense which have been stricken and to plead an oral contract of some character entered into prior to the written contract which is in evidence here between the parties, [627] and my objection to it, first, is that the amendment has not been timely made. This matter has been in the courts for substantially over a year, as I recall, or approximately a year. During that time, there was filed an original answer, during that time, there was filed an amended complaint, and there was filed—I requested of counsel whether they desired merely to stipulate that their original answer should stand to the amended

complaint or whether they wished to file a new answer, and they expressed the desire to file a new answer, which they did. That answer, I think the record will show, has been on file for months and months, and it was not until the time of this trial any such a contention as this was ever made.

Now, to permit the amendment at this time would be to deny us the privilege of all of the pretrial procedures which are provided by the Federal Rules of Civil Procedure, such as discovery, interrogatories, the other pretrial procedures, which would determine the facts, and I do not believe that such a motion is timely made.

In addition to that, I submit to your Honor that inasmuch as this so-called oral agreement that they have attempted to plead was preceding, though I—did you state the date? [628]

Mr. Etter: Beg your pardon?

Mr. DeGarmo: I am not sure whether the amendment stated the date.

The Court: What I understood, counsel—of course, I just heard it read once myself—but I understood what he is basing it on is what has come out here in the testimony from various witnesses, at least it seemed to me it has, that in the first place when Morrison-Knudsen entered into this contract with the Atomic Energy Commission, they agreed to abide by the area contract. There is no doubt about that, is there?

Mr. DeGarmo: That's right, there is no question.

The Court: So what he is saying is that the

plaintiff adopted the area contract and, even though it was cancelled, it was cancelled with reservations or provisionally cancelled with the understanding that certain of its terms should continue on, and that by adoption of this contract you were bound by those provisions and were operating under it rather than under the contract negotiated through the Associated General Contractors.

Mr. Etter: That is correct.

Mr. DeGarmo: That isn't the way I read it. [629]

The Court: It doesn't seem to me because you have a contract here that, I think by its terms would apply to Benton County, that the parties couldn't go down there and make a special arrangement as to a part of Benton County that excluded this contract from its operation, and that is what they are undertaking to prove here, I think. Is that correct?

Mr. Etter: That is correct.

Mr. DeGarmo: Your Honor will recall that every time—and I could foresee this coming and I tried to guard against it in every way that I think was possible within your Honor's discretion—I objected every time——

The Court: Yes, I know.

Mr. DeGarmo: ——they asked a question, and it was a continuing objection.

The Court: Well, I am not saying that the evidence came in. If it came in without objection, we wouldn't need a motion.

Mr. DeGarmo: That's right.

The Court: Because the pleadings would be construed to be amended to conform to the proof.

Mr. DeGarmo: I have had this happen to me before where they keep asking the questions and the [630] court lets it in and then the court decides that they have amended by the construction.

The Court: No.

Mr. DeGarmo: But I don't think your Honor is suggesting that. But I want to read from this thing. They didn't furnish me a copy and sometimes the technical language means something. They say the plaintiff at the time of the commencement of the work agreed. That is a contract, that is what they are pleading, the thing that I have objected to constantly, that they were attempting to plead and rely upon an oral contract—or to rely upon an oral contract not having pleaded it. Now they are coming in here after the close of the plaintiff's case, after this case has been at trial for three days, after over a year or approximately a year, and are asking to plead an oral contract.

“Plaintiff agreed with the defendant locals 839 and 370 that said Hanford contract should apply to said job until completed and, although termination notice of said contract was made on December 29th, the terms of said contract were applied until after March 20th, 1956.”

Now, they have pleaded an oral contract——

The Court: Whether they have pleaded it [631] or not, it doesn't seem to me—of course, I am not trying to say what the defendants' position is, I am

trying to shorten this by my giving my understanding of what it is——

Mr. DeGarmo: Yes.

The Court: I don't see that they would have to plead an oral contract between Morrison-Knudsen and the union, because here we have unquestionably a written contract between the Atomic Energy Commission and Morrison-Knudsen that Morrison-Knudsen will abide by the terms of the area contract. Isn't that correct?

Mr. DeGarmo: Oh, yes.

The Court: And the contract made for the benefit of third party unions would be enforceable by them, I should think.

Mr. DeGarmo: Oh, yes, but that agreement also specifically states that we will abide by it only—I would rather read from the contract and then there can't be any question:

“During the life of the Hanford Works Agreement——”

that is the predicate of the whole paragraph——

“During the life of the Hanford Works Agreement, the contractor agrees to pay laborers and mechanics engaged in the work [632] hereunder at Hanford Works the scale of wages and allowances prevailing at Hanford Works as determined by the Commission.”

Now, in order to cover that specific fact, we asked for an admission by these parties that the Hanford Works Agreement, the item here which is mentioned, was terminated as of December 31st, 1955. They have admitted that it was so terminated.

Mr. Etter: As qualified.

Mr. DeGarmo: Well, now, let's read what you admitted.

Mr. Etter: All right, read it.

Mr. DeGarmo: Yes, you admitted that there were continuing negotiations and you have an admission that no subsequent agreement was ever consummated.

Mr. Etter: That's right, read it if you want.

Mr. DeGarmo: Well, I am always willing to read to the Court. I realize that they don't like to admit something that hurts their case and they have tried to qualify it.

Mr. Carey: Do you?

The Court: All right, let's have it.

Mr. DeGarmo: There are two admissions on this so we will read both of them. This is their first answer: [633]

“Answering Request 13, defendant International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 839, Joint Council of Teamsters No. 28, and Western Conference of Teamsters, admit that the contract in force prior to January 1st, 1956, and applicable to the Hanford Works was cancelled as of December 31st, 1955, by notice given by Hanford Contractors Negotiating Committee through Kenneth M. McCaffree, its executive secretary, and that no substitute contract became effective relative to said area——”

Now I am reading the second admission, rather than the first. I will read the other.

The Court: Yes, all right.

Mr. DeGarmo: (Reading continued:)

“and that no substitute contract became effective as to said area between January 1st, 1956, and the date of the work stoppage referred to in plaintiff’s amended complaint, and these defendants deny that the contract attached to plaintiff’s amended complaint as Exhibit A had or has any application to [634] work to be performed within the area.”

Now, you will notice that they say both that it was cancelled and that no substitute contract came into effect. Now, it is true that that request had to do particularly with any contract dealing with health and welfare, but the only contract that could have dealt with health and welfare was the Hanford Works Agreement.

All right, now, the other one. I thought I had these indexed, but I don’t seem to.

Mr. Etter: I think you will find it is the answer to your request number 10.

Mr. DeGarmo: Is it 10 in the same——

Mr. Etter: 10 in the same one, I think, Mr. DeGarmo.

Mr. DeGarmo: That is probably the reason; I thought it was in a separate answer. Yes, number 10. The question which was asked in number 10:

“That at no time since December 31st, 1955, has there been in force or effect a construction collective bargaining agreement covering Hanford Works or the area known as Hanford Atomic Products Operations between the Hanford Contractors Negotiating Committee and any of defendants to this action?”

They say: [635]

“Admittedly, subject, however, to the qualification that between December 31st, 1955, and the date of the work stoppage referred to in the plaintiff’s amended complaint negotiations were being carried on between a committee representing interested labor unions and Hanford Contractors Negotiating Committee for a new contract covering construction work to be performed exclusively within the Hanford area.”

Now, that is quite a different thing than what they are attempting to plead now. They now say that, while this is all true, that there was another contract; this says merely negotiations.

Now, they don’t plead, nor is there any admission—in fact there is an admission that the Hanford Works Agreement, which we were obligated to follow under the A.E.C. contract, was terminated. They say true, there were some negotiations, which we admit that there were, apparently some contractors’ negotiating committee down there was doing some negotiating during that time. Who for, I don’t know. There has been no showing that they ever negotiated for the plaintiff in this action, but they are now attempting to say that [636] during this same period, and I first want to say that that terminates the A.E.C. agreement, we had no obligation from December 31, 1955, under the A.E.C. agreement because it was only binding on us during the life of the Hanford Works Agreement, and there is no controversy in this case whatsoever that the Hanford Works Agreement was terminated on De-

ember 31, 1955. They don't plead and they don't claim that it was, and I am sure there can be no contention about that so far as any obligation under this contract. It ceased as of December 31, 1955. From that time on, the only obligation we had contractually, we claim, was under Exhibits 2 and 3. Now they are attempting to come into court at this time and say that plaintiff, at the time we commenced work, and they don't specify what that date is and I would like to have it specified, if they will, agreed, because if that was a date preceding the execution of these two contracts, I think under the rule that a later written contract covering the subject matter excluded the prior agreement, that it would have fallen. They don't claim that this was in writing; in fact, they don't say what this agreement was, whether it was oral or in writing; they merely say that plaintiff at the time of commencement of work, agreed with the defendant locals that said Hanford contract should [637] apply to said job until completed, and that is in spite of their answer that the Hanford Works Agreement was terminated, and:

“Said Hanford contract should apply to said job until completed, and although termination notice of said contract was made on December 29th, the terms of said contract were applied until March 20, 1956.”

Now, as far as the latter part of that, to show what happened down there, I introduced testimony which I thought we were obligated to introduce for the benefit of the Court to show the negotiations leading up to the breach which occurred as to how

the breach occurred, and I don't think they need any amendment to show what the negotiations were leading up to the breach, but certainly as far as pleading a contract, which they are now attempting to do, I object to it upon the ground that it is not timely made and it must be pleaded. If they are relying on a contract which was made, that is an affirmative defense. They can't come into court under a general denial and say, "True, there was a contract, we admit it, but there was an agreement that it was not to be effective." That is what they are saying. That must be an affirmative defense, it cannot be a general denial, because under their general denial [638] they denied the existence of the contract, if your Honor will remember. If they had admitted the contract and pleaded that that contract, although it was a contract, was not to be in effect, then they would have done it by an affirmative defense and properly so. But they denied the existence of the contract and now they are coming in at this stage, after having denied it all the time up until this minute, and saying, "All right, we say that you agreed it wasn't to be effective."

Now, it seems to me that there has got to be some consistency in pleading and there has got to be a time when pleadings are made up. As I say, to answer this so-called agreement, we certainly should have had the benefit of all the pretrial procedures which would have permitted me to take depositions from these people that they are going to try and put on the stand to testify as to this and to give me an

opportunity to bring witnesses here. There were many people at these meetings and I don't know what they are attempting to produce, but I am telling your Honor that this is not timely made and we certainly object to it upon that ground.

The Court: I think that Mr. DeGarmo's position certainly would be well taken under ordinary circumstances, that the amendment had not been timely made, [639] but we have the situation here which is certainly unusual in that the defendants set up affirmative defenses that the contract negotiated through Associated General Contractors didn't apply to the Hanford Area for the reason that the parties didn't intend it to apply, and that, I presume, would have contemplated practically the same testimony and evidence that will be adduced in support of this proposed amendment; that is, if the affirmative defenses had been permitted to stand and anything that would indicate in the dealings with the parties or in their conferences that it wasn't the intention of the parties that this contract should apply to the Hanford Area, but that some other different arrangement had been made under which they were working, then that would be admissible, of course, under that affirmative defense. That motion to strike the affirmative defense, or certainly motions directed to the sufficiency of the affirmative defense, was argued and the Court denied the motions and indicated in the order that he thought it would be preferable to hear the evidence rather than to pass upon the question on the pleadings, so that defense counsel had every right to assume that they would be

permitted to put on their evidence and came here prepared to put it on, I assume, and, conversely, counsel should have been prepared, no [640] doubt was prepared, to meet that evidence.

Mr. DeGarmo: I was and am, but that is not the evidence that we are talking about here.

The Court: It would be substantially the same, it seems to me. I can't see where it would vary very much. All that they are proposing to prove and what they have brought out on cross-examination would have been pertinent to their affirmative defense and it is likewise pertinent to their contention that there was a different arrangement down there, that you didn't apply this contract to the job on the Hanford Works. That is the gist of their defense, as I see it.

Mr. DeGarmo: Might I have the privilege at this time of your Honor that I think I would have had had this been timely made, to ask that before the Court consider it, the parties state in their amendment when this alleged agreement was made?

Now let me point out the difference between what your Honor has indicated here and what the fact is. Your Honor has indicated that the same testimony would be presented to show that the parties never intended to have this Exhibit A or Exhibits 2 and 3 apply. That would necessarily relate to the area preceding the execution of those contracts. Necessarily, if they never intended, it would have to relate to the period [641] preceding.

The Court: Oh, come, Mr. DeGarmo, you mean to say that you can't show the intention in making

a contract by showing the conduct of the parties after the contract was made? Do you think you would be shut off from one of your representatives saying, "Why, no, of course we didn't intend this contract to apply to the Hanford Area, just forget about the contract." If that was made after the contract was executed, under your theory, it would not be admissible.

Mr. DeGarmo: If it was an agreement made afterwards, I agree. If it was an agreement made afterwards.

The Court: No, what I am talking about is, if the party says this contract wasn't intended to apply to a particular job, which, of course, has to be done after the contract was made, certainly they can show the conduct of the parties after the contract to show that they never intended in the first place that it should apply. And perhaps I am wrong about that, but I don't think so.

Mr. DeGarmo: I think your Honor should reconsider that statement, because you are flying right square in the face of the parol evidence rule. The contract says what it intended. No. I agree—— [642]

The Court: No, I am not talking about the parol evidence rule. We are not varying the terms of this contract. The contract is there, what it means is one thing——

Mr. DeGarmo: That's right.

The Court: ——but do you mean to say the parties can make a contract and then by conduct or mutual understanding never operate under it at all,

operate under something that is entirely different, and then come back after the whole situation is over and say, "Although we are without a contract, we are enforcing our contract and you can't vary it by showing we didn't live up to it or didn't try to apply it?"

Mr. DeGarmo: I don't think your Honor and I have any argument about that, that if they can show that the parties did not apply the contract, and your Honor has indicated that——

The Court: How can they best show that the parties didn't apply the contract than by showing that some other entirely different arrangement was followed out inconsistent with the contract?

Mr. DeGarmo: Well, what I am trying to say to your Honor——

The Court: All right.

Mr. DeGarmo: ——is that I came here prepared to [643] show that in the negotiations leading up to the consummation of this contract, these two contracts, Exhibits 2 and 3, there was no intention—in fact, it was the intent of the parties that they should apply. Now counsel for the first time has at this stage attempted to plead an agreement. Now, obviously, that agreement had to be made at some time when there were persons present on behalf of Morrison-Knudsen Company and perhaps other parties. I don't know when the agreement is made. All I have asked your Honor at this point is if I am not permitted the same rights that I would have before if this had been made timely, to have them state in their offer for amendment when this agreement was

made in order that I can argue the question as to whether it was before or after. They must know when this agreement that they are relying upon was made. I think I am at least entitled to that.

Mr. Etter: My position is based right on his own complaint. He says that they entered into the performance of this A.E.C. contract, I think it was on the 28th day of November. The contract that they have with the A.E.C. agrees, as Mr. DeGarmo has admitted, to conform to the Hanford Works Agreement.

Mr. DeGarmo: As long as it is in effect.

Mr. Etter: As long as it is in effect. Now, [644] the date, if you want to know the date that you became bound to pay under the Hanford Works Agreement, it is the same date you say you went to work down there.

Mr. DeGarmo: That isn't what I am asking; I am asking the date of this agreement that you set up in this proposed amendment.

Mr. Etter: Well, I will say, furthermore, that our proof will show that you reiterated and you repeated your agreement under which you were working on the 5th day of January.

Mr. DeGarmo: Well, is that the date of the agreement that you are referring to?

Mr. Etter: I am referring to both of them. You, yourself, automatically became bound on this contract to be under the Hanford Works Agreement.

The Court: Well, I think——

Mr. Etter: And it was on January 5th that you

reiterated that you were and that you would continue to be. Now, I can't make it plainer.

The Court: I think if the amendment is allowed, that it should be typed out and a copy handed to Mr. DeGarmo and then he can make motions to make a more definite statement, if he cares to do so.

Mr. DeGarmo: I would like to ask this of your Honor. I don't wish to quarrel with your Honor about [645] your ruling if you are going to permit them to do this——

The Court: Well, I never dodge an argument. If you want to argue, I will argue with you, but you have been doing it pretty well so far, I think.

Mr. DeGarmo: No, sir, I don't wish to argue, but I merely wish to state, if your Honor please, that during the course of the testimony if it appears that they are producing evidence on an area where we do not have the witnesses available here, certainly at that time I will expect to request the Court that a continuance be granted in order that we may have an opportunity to meet the testimony, and I think that that is something that I should be entitled to some consideration on at that time.

The Court: Well, the Court has just got to the point, I believe, of trying to explain why the Court thinks that the matter of requiring timeliness here doesn't apply to this particular situation; that what I was saying was that, in view of the Court's changing its ruling on the motion to strike, and I am not receding from that, I think that I was justified in doing it because of the statement of counsel for the defense that that was what they proposed to show

here, and that the affirmative defenses adequately and fully stated their position, but that doesn't alter the fact [646] that the defendants came here expecting their affirmative defense to stand, at least through the trial, and to have an opportunity to present evidence in support of it, and the changing of that situation was the Court's doing, not theirs. So that they have been put in this position where you couldn't say that an amendment wasn't timely, because the situation was changed on the outset of the trial.

Now, I think that one thing that perhaps impresses me and that is that counsel on both sides, I think, are placing too much emphasis on the pleadings, and I will include in that the interrogatories and the answers. The interrogatories and answers have no higher status than the pleadings in the case, and even though admissions may be made in there, if counsel thinks it is in the interest of his client and in accord with the actual facts and the testimony and the evidence that is to be adduced, he has a right to ask for an amendment, regardless of whether it is consistent with his prior pleadings or consistent with his prior admissions, and the whole spirit of modern trial work, as outlined in the Rules of Civil Procedure, is to have lawsuits tried and decided on the evidence and not on the pleadings, which are simply a statement of counsel at various stages as to what they think will be proven, as to what [647] they think the evidence will be, and that is certainly made very clear by Rule 15 of the Rules of Civil Procedure,

which not only provides that if evidence comes in without objection, the pleadings shall be construed to be amended to conform to the proof, but also I think it gives to the trial judge a very clear injunction to be very liberal in the matter of allowing amendments to the pleadings, and in rule 15 (a) it points out what amendments may be made without order of court and then, otherwise:

* * * "A party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires."

Then again down in 15 (b) is the provision, as I have said, that if the proof comes in without objection—doesn't apply here, of course—then the pleadings shall be construed to be amended to conform to the proof. But even if objection is made, you find this provision in 15 (b):

"If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of [648] the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence."

Now, it may be I will not dispute Mr. DeGarmo on that because he knows his position in this lawsuit better than I do. It may be that evidence other than

would have come in under the affirmative defenses will be necessary to support this proposed amendment, but it seems to me in general outlines there isn't a great deal of difference as to the position here as to whether this contract was actually applied to this particular job on the Hanford Works and the parties were operating under it or were operating under something else, and we have, too, this situation, that it isn't as if Mr. DeGarmo would be called upon this afternoon to meet evidence which is brought in under an amended pleading. We certainly will not conclude this case today. It looks as if we would do well if we would get through with the arguments by 5 o'clock this afternoon the way we are going. But this case will have to be continued over until next week and probably, I should think, will [649] take most of next week, so that counsel will have from Thursday night until Monday morning to get such additional evidence as may be necessary to meet whatever new evidence or proof may be brought in, and, of course, the Court will entertain at any stage a motion for continuance. Not saying that I will grant it, but I will consider it if counsel thinks that he should have a continuance.

Mr. DeGarmo: I wish to state at this time, in order that the record may be clear on the subject, that I conceive that one of the very material witnesses to the issue which they are now attempting to present will be a Mr. Henry Thurston, who at that time was with the Atomic Energy Commission and now is in Washington, D. C., and will be unavailable for the purpose of this trial. I would have

had to take his deposition in order to meet this evidence. I merely want to state that because later it may be used as the basis for asking for a continuance.

I would like to ask this further indulgence by the Court, as I understood Mr. Etter to state when he made this motion that he was asking to reinstate all of the allegations of the stricken affirmative defense. Now, I don't know what allegations. I tried to follow this, but he read it so fast I couldn't, and if there are [650] certainly any allegations in there which have already been stricken, it doesn't seem to me that they would be proper.

The Court: Well, I didn't construe his motion to mean that he is asking now to prove or to bring in proof as to what was intended by the written contract or that this language means other than it indicates.

Mr. Etter: I specifically made it clear that I was aware from your Honor's ruling that the Court would not allow me to introduce evidence prior to the initiation of the contract of the Associated General Contractors and during their negotiations to prove or vary it by any parol testimony; that your Honor's ruling applied only to my showing a course of conduct under a contract other than the contract that is in dispute. I understand that was the Court's ruling and that is all I intend to do.

Mr. DeGarmo: My only point is this, if your Honor please, and then I will cease talking.

The Court: Yes.

Mr. DeGarmo: That if by this amendment, not

objecting to it at this time since I don't know its specific language, I will object at the time any evidence is offered which would seem to be in support of the allegations of the original affirmative defense, [651] and if that may be considered as not being a waiver if they have pleaded in this thing anything which is in that affirmative defense, I don't want to waive the right to move to strike it.

The Court: Well, the record will show your objection here, of course, to the amendment and then, if you wish, you may object to offer of proof under the amendment. Of course, Mr. DeGarmo has adequately preserved his record here and the Court has tried to assist in that. I think that is what you should do and you have objected all along to this evidence, but we have had protracted cross-examination which, as I see it, was in support of this defense, in substance, anyway.

Mr. Carey: Yes, that is correct.

The Court: And that has been going on for a couple of days here.

Mr. Carey: One hour, your Honor.

The Court: All right.

Mr. DeGarmo: Over my protest.

The Court: Oh, yes, I prefaced my remarks by saying that, that you have kept your record very adequately by objecting.

I assume that counsel doesn't want to at this stage, but in the formal amended pleadings and the amendment, if stated to your satisfaction here, I suggest [652] that the reporter, perhaps during the

noon recess, transcribe it and then you can polish it up, if you wish.

Mr. Etter: What I was going to do, your Honor, was have it typed, because I want it, and I will hand a copy to Mr. Oden when I return and also to Mr. DeGarmo.

The Court: Yes, all right. Court will recess for ten minutes.

(Short recess.)

The Court: Before we proceed, I think the Clerk mentioned that according to his minutes here there was some statement made by Mr. Etter to the effect that he was moving to reinstate the affirmative defenses with certain additions. Now, I didn't mean by my ruling to permit the reinstatement of the affirmative defenses——

Mr. Etter: I understand you didn't.

The Court: ——and I will not take that position. I think I made my position clear on that.

Mr. Etter: Yes, and I won't assume that you did.

The Court: Yes, all right.

Mr. Etter: I want to call Mr. Knapp.

The Court: Which I might say means, according to the Clerk, Mr. DeGarmo, that you were right and I was wrong on that matter. [653]

Mr. DeGarmo: No apologies are necessary.

The Court: All right.

CHARLES J. KNAPP

called and sworn as a witness on behalf of the defendants, was examined and testified as follows:

Direct Examination

By Mr. Etter:

Q. You are Charles J. Knapp?

A. Yes, sir.

Q. Where do you live at the present time, Mr. Knapp? A. Pasco, Washington.

Q. Pasco, Washington. And how long have you lived at Pasco, Washington?

A. Since May of 1943.

The Court: Pardon me, to save time here, Mr. DeGarmo, if you wish, the record may show that you object to all the testimony that may be adduced here in support of the amended affirmative defense, and, of course, I don't wish to relieve you of the responsibility of making individual objections if for some other reason than that you are not conceding that the affirmative defense should be allowed, that you should state that separately when the question is asked.

Mr. DeGarmo: I appreciate that, if your Honor please. [654] That will shorten the time considerably if we may so understand.

The Court: Yes, all right.

Mr. DeGarmo: I didn't think, since they were only asking his name and address, that I was in a position to do it.

The Court: No, all right.

(Testimony of Charles J. Knapp.)

Mr. Etter: Two more answers than some people have been getting, at that.

Q. (By Mr. Etter): You have lived in Pasco since about 1943, you say? A. Yes.

Q. And what has been your occupation, Mr. Knapp, while you have been there?

A. Union representative for Plasterers and Cement Finishers.

Q. And have you also been acting or have you acted during that time as a representative of what is known as the Building Trades Section?

A. Yes.

Q. Of the American Federation of Labor?

A. The Secretary of the Building Trades Council.

Q. Of the Building Trades Council. And how long have you been secretary of the Building Trades Council?

A. In two different times now. Just this last year, then I think about five years on another time. [655]

Q. At another time? A. Yes.

Q. And you were living in Pasco, were you not, at the original inception of the construction and otherwise of what is now known as the Hanford Works? A. Yes, sir.

Q. And have you been familiar with the Hanford Works from the labor end since 1943?

A. Yes.

Q. And have testified, I think, at other times in this Court, have you not?

(Testimony of Charles J. Knapp.)

A. In the Federal District Court, yes.

Q. Yes. On the various aspects of the Hanford Works? A. In Yakima.

Q. In Yakima. Now, in 1955, and I have reference now to the months of November and December particularly, at that time was the defendant union, Engineers Local 839, a member of the Building Trades Section of the American Federation of Labor? A. Yes.

Mr. DeGarmo: 839?

Mr. Etter: I said Teamsters 839, isn't that right?

Mr. Carey: The Engineers 370 and Teamsters 839.

Mr. Etter: Teamsters, oh, yes. [656]

Q. Teamsters 839, were they members?

A. Yes, they were.

Q. And were the Operating Engineers, Local 370? A. Yes, sir.

Q. Now, that Building Trades Section of the American Federation of Labor is a chartered federation, is it? A. It is.

Q. It is chartered. When did you receive the charter for that local federation?

A. I think that charter—oh, it is several years old. Long before 1943. I think perhaps in about—I believe the date on it is 1939.

Q. 1939. And this is the charter that you refer to under which this Building Trades Section operated in Pasco and that area?

A. It is the Building Trades Council, an af-

(Testimony of Charles J. Knapp.)

affiliate of the Building Trades Department of the A. F. of L.

Q. Of the A. F. of L. And included about how many unions, approximately?

A. It varied from 15 to about 19.

Q. Fifteen to about 19? A. Yes.

Q. Were those unions or many of them or a percentage of them engaged in work on the Hanford Works Project in the months of October, November and December of 1955, do [657] you know?

A. There were not so many employed during those three months.

Q. I see. Have members of those building trades unions been at all times employed on the Hanford Works?

A. During the construction, they have all been employed there.

Q. They have all been employed?

A. Yes, sir.

Q. And you do not know how many of the various crafts were employed on any construction within the Hanford Works Project during October, November and December, 1955?

A. No, I can't give you that figure, I don't know it.

Q. You do not know it. Now, at that time did you also represent an individual or a particular union other than act as secretary of the Building Trades Section?

A. I have been a representative of the Cement Finishers since 1943. I represented them, yes.

(Testimony of Charles J. Knapp.)

Q. I see. Were you the secretary in 1955?

A. Not in November of '55.

Q. Not in November? A. No.

Q. When did you become secretary again?

A. In July of '56.

Q. In July of '56. And you had been secretary before? [658] A. Yes.

Q. At what time?

A. Well, I think from about '45 through—oh, on through, I believe, until '52.

Q. '52? A. I think so, about then.

Q. Now, in November and December of 1955, did you have any contract of any kind directly with the plaintiff, Morrison-Knudsen Company?

A. No.

Q. Beg your pardon? A. No, sir.

Q. You did not. Did you at that time, in October, November, or December, let's put it, of 1955, have any contract or collective bargaining agreement with the Associated General Contractors, Heavy Highway Chapter?

A. The union that I represent was not under agreement to the A.G.C.

Q. They were not?

A. That is, the Heavy Highway.

Q. Now, during October, November and December of 1955, were any of the men in your union, that is, the Cement Finishers, employed by any contractor on the Hanford Project

A. Yes. [659]

Q. Do you know how many?

(Testimony of Charles J. Knapp.)

A. There were very few. I think perhaps as many as 8 or 10.

Q. At that time? A. Yes.

Q. And could you tell me during the year, 1955, if you know, about how many of your craft and in the union you represented were employed on the Hanford Works?

A. We may have had as many as 30.

Q. As many as 30? A. Yes, sir.

Q. In October or November or December, did you have any employees working on the project for Morrison-Knudsen on their particular contract?

A. I think not, I don't think so, in '55.

Q. You don't think so?

A. No, sir; I know we didn't.

Q. But you did have a number working on the project for other contractors at that time?

A. Yes, sir.

Q. I see. How were they being paid at that time while they were on the project?

Mr. DeGarmo: Just a minute, now, Mr. Knapp. I fail to see where that has any materiality to any of the issues in this case or to any issue of this [660] affirmative defense.

Mr. Etter: Well, I am merely showing——

Mr. DeGarmo: What they were being paid by other contractors.

Mr. Etter: Well, I merely intend to show that they were being paid under the Hanford Agreement. It is preliminary to other questioning that I have following January the 1st when they became

(Testimony of Charles J. Knapp.)

employed by your company. If that is permissible.

The Court: Well, all right.

Mr. DeGarmo: If it is just preliminary, I was waiting to find out.

The Court: I assume that it is.

Mr. Etter: Yes, it is.

Q. Were members of yours—let's put it that way so we can get to it—working at that time, October, November and December, under the Hanford Agreement? A. They were.

Q. They were. And in connection with that, they were being paid isolation pay?

A. They were.

Q. And were they being supplied bus transportation? A. They were.

Q. They were. Now, but none of your people during 1955, as I understand it, and I am referring particularly to [661] these three months because they involve other factors, none of them were working for Morrison-Knudsen?

A. They were not.

Q. They were not. Now, were you aware shortly after December the 29th of a letter written by Mr. McCaffree, who was the secretary, apparently, of the Hanford Contractors Negotiating Committee, were you aware of a letter written by him to the respective unions?

A. Yes, I got a copy, I got a letter from him.

Q. Did you receive—was that a copy or a letter the same as we have referred to here and was read?

A. Yes, sir.

(Testimony of Charles J. Knapp.)

Q. And you have had a chance to look at it?

A. Yes, sir.

The Court: Is that the cancellation letter, is it?

Mr. Etter: Yes, your Honor.

The Court: That is in evidence, isn't it?

Mr. Etter: Yes, it is.

The Court: And it is the one the employers wrote?

Mr. Etter: I think it is attached to a pleading.

Mr. DeGarmo: Yes.

The Court: Well, all right.

Mr. DeGarmo: It is in the requests for [662] admissions.

Q. (By Mr. Etter): Now, thereafter, did you make any arrangement for a meeting with any representatives of Morrison-Knudsen?

A. Well, we had a meeting on January the 5th that was called by the Building Trades Council and I attended that.

Q. I see. Is that the meeting at which Mr. William Dunn, a representative of the Operating Engineers, was present? A. Yes, he was there.

Q. And was a representative of the Teamsters present, do you recall, at that time?

A. I'm not sure, sir, about the Teamsters. I thought that Sewell Davis was present, I have been corrected since, so I'm not sure who was there.

Q. I see. You are acquainted with Mr. Edward Clarey? A. Yes.

Q. And was he there? A. Yes, he was.

Q. And was Mr. King?

(Testimony of Charles J. Knapp.)

A. Mr. King was there.

Q. Mr. Rossman? A. Mr. Rossman, yes.

Q. And numerous others were there?

A. Yes, about 15, I think. [663]

Q. About 15. Were those men representatives of the individual crafts that compose the Building Trades Federation and Section? A. Yes, sir.

Q. They were. And was anybody there representing Morrison-Knudsen that you recall?

A. Mr. Lee Knack and Mr. Reed were present.

Q. Mr. Lee Knack and Mr. Reed? A. Yes.

Q. I gather from the testimony that this was held in the labor hall at Richland?

A. No, at Pasco.

Q. At Pasco, excuse me. I think Mr. Knack said that it started around 2:30 and extended until close to 5:30, when he had to go and take a plane. Would that be a fair statement of the time?

A. I think he is right.

Q. And why did you call that meeting? What was it called for?

A. The Building Trades Section called the meeting, which was a usual thing for a pre-job conference so that we might discuss many matters between various unions and the employer in reference to the manpower needed and about what time he would start, various different phases of his work, what his policy would be in hiring, and, oh, [664] it is just a conference that is nearly always held when a major job is being started.

Q. It is a matter generally, then, of coordination, is that right? A. Yes.

(Testimony of Charles J. Knapp.)

Q. Between the unions and the contractor who is going to employ the men? A. That's right.

Q. Now, during that conference or during that discussion, did you have any occasion to discuss with, and if you did, name the person, a representative of Morrison-Knudsen, the matter of the conditions of employment on the Morrison-Knudsen job within the Hanford area?

A. Yes, we had. There was much said about the employment, how many men would be employed of each craft, and about when they would be employed. Yes, there was much conversation in reference to that.

Q. All right, and then was there some conversation with respect to the matter of the wages and other conditions of employment?

A. Well, the wages were fixed. They had our Schedule A——

Mr. DeGarmo: If your Honor please, I believe that I am entitled to ask, and I do ask, that on a subject which is as important as this that the witness be requested to give exact conversation, if it is possible [665] for him to do so.

Mr. Etter: All right.

A. I will do the best I can.

The Court: In substance, yes. Of course, you couldn't remember the exact words.

Mr. Etter: All right.

The Court: But as nearly as you can.

Mr. DeGarmo: The exact words may be very important.

(Testimony of Charles J. Knapp.)

The Court: State the conversation and identify the person who made the statement.

Mr. DeGarmo: In this case, the exact words may be very important.

The Court: Well, if he can remember them, certainly.

Q. (By Mr. Etter): Keeping that in mind——

A. Yes, sir.

Q. ——Charlie, and if you can remember who said what and the exact words or, as his Honor says, as closely in substance, if you will do that. Did you during the conversation make some statement to Mr. Knack or to some Morrison-Knudsen representative that you recall?

A. The meeting was under the chairmanship of Mr. Dunn and Mr. Bud Shirk was the secretary, and I was sitting there just as a member of the Council. I had very few [666] questions of my own to ask during the main part of the meeting. However, there was two points of interest, they were the only two that I was particularly interested in, and that was what the company intended to do in reference to furnishing transportation for their employees and the payment of isolation pay. I was particularly interested in them two points.

Q. Did you have some conversation about that?

A. Well, after the general meeting, I told Mr. Knack that there was two points that I was particularly interested in and I would have to have the answer for the people that I represented, what Morrison-Knudsen was going to do if the Hanford

(Testimony of Charles J. Knapp.)

Contractors Committee carried out what they had said they might do. That would be the discontinuance of both items. What they would do. Do you want the answer?

Q. Yes.

Mr. DeGarmo: Just a minute, Mr. Knapp. I don't like to interrupt the witness in the middle of his answer; however, from the statement which the witness has now made, I object to the answer being given upon the ground that it would be entirely incompetent and irrelevant and immaterial to any issue in this case, inasmuch as he has testified that he was the business agent at that particular time only for the Cement [667] Finishers and he stated he was only interested as to his particular craft. Therefore, any statement that may have been made to him regarding his craft would have no relevancy as to the Operating Engineers and the Teamsters.

The Witness: May I add one little thing to that?

The Court: Well, all right.

The Witness: To the statement I just made?

Mr. DeGarmo: I have made an objection.

The Court: Well, I should rule on the objection first.

I should assume in a situation of this sort the representatives of labor would be acting jointly and not representing simply their individual craft, so I will overrule the objection.

Mr. DeGarmo: If your Honor will remember, he was not at that time other than secretary of the Cement Finishers.

(Testimony of Charles J. Knapp.)

The Court: Yes, the thought that I had in mind was, Mr. DeGarmo, here is a meeting that is called, a pre-job conference with the contractor who is going to employ labor, representatives of a number of the crafts are there. If the representative of the employer is authorized to speak for him, what he says there, I should [668] think, would be binding on all, would be binding upon the employer as to all the employees there, as to all the unions, and not that he promises one one thing and another another. For instance, I shouldn't think it would be necessary if a representative of one craft says, "Are you going to furnish transportation and isolation pay?" and the answer was "Yes," I don't think it would be necessary for everyone there to say, "Are you going to furnish it to the Engineers, to the Teamsters?" I wouldn't think that that would be necessary to bind the employer.

Mr. DeGarmo: I think it would.

The Court: Okay.

Mr. DeGarmo: Because certainly none of these unions permit anybody else to negotiate for them; they each negotiate their own contracts.

The Court: Unfortunately, we disagree on that, Mr. DeGarmo.

Mr. DeGarmo: And he had predicated his testimony by the statement that this occurred after the general meeting.

The Court: Oh——

The Witness: I'm sorry, sir, I think——

(Testimony of Charles J. Knapp.)

The Court: Well, that is a different matter.

The Witness: —Mr. DeGarmo misunderstood.

The Court: If it was some conversation he had in the hall or in the washroom with a representative of M-K, that is a different matter, but I understood that it was a part of this conversation, pre-job conference that was called where the unions were negotiating with the employer.

Mr. DeGarmo: Might I ask the reporter to read that?

The Court: All right.

Mr. Etter: Let me ask a question. He may have said it was the tag end of the meeting, but was it during the meeting? A. Yes, sir.

The Court: Well, I will overrule the objection.

Q. (By Mr. Etter): All right, who was present at the time you asked this question?

A. I think nearly all of them were still in the room when the question was asked. I was actually the spokesman, if I am permitted to say so. The three unions involved had determined at the early part of the meeting or before the meeting that that question would have to be asked about those two items, and I didn't ask the question until the regular conference, the usual conference, was over with and then I asked the question because, as you might say, a spokesman for the three so that the three [670] different ones wouldn't need to ask it.

Q. You are referring to the Engineers——

A. To the Teamsters—I talked with Mr. Sewell Davis, who was then a representative for the Team-

(Testimony of Charles J. Knapp.)

sters, previously, and I also talked with Mr. Dunn and Mr. Rossman, and I was the one who asked the question of Mr. Lee Knack.

Q. All right, and when you asked the question, did you direct it to Mr. Knack? A. Yes.

Q. And what did he say?

A. He said that they would pay isolation pay and continue to furnish transportation. He said that the Morrison-Knudsen Company had bid the job planning on paying isolation pay and furnishing transportation; that was the way they figured the job.

Q. Did he say anything about the continuance of the job? A. Well, that was——

Mr. DeGarmo: I object to that question upon the ground it is leading. I think we should have the testimony from the witness.

The Court: I think it is a leading question.

Q. (By Mr. Etter): What else further did he say, then, if you recall, about this job?

A. Well, I made reference again to the possibility that the contractors, Hanford Contractors Committee, might do as [671] they had said they might do, just chop it off, and Mr. Lee Knack again said that Morrison-Knudsen would pay isolation pay and furnish bus transportation.

Q. All right. Now, thereafter and after January the 5th, did members of your union work on the Morrison-Knudsen Company job in the Hanford area? A. Yes.

(Testimony of Charles J. Knapp.)

Q. And did they continue to work there until March? A. That's right.

Q. At the time of the work stoppage?

A. Yes, sir.

Q. Do you recall how many men of your craft worked out there, if you recall now?

A. I think there may have been about three or four. I am not sure about the number, I don't think there was over four employed at the time.

Q. I see. Did they work under the same agreement with Morrison-Knudsen as they had worked in 1955? A. Yes.

Mr. DeGarmo: Just a minute, just a minute.

That calls for the conclusion of the witness.

Q. (By Mr. Etter): Well, all right, let's put it this way——

The Court: Yes, I think it does. I will sustain the objection.

Q. (By Mr. Etter): Did they work under the same conditions [672] in pay?

Mr. DeGarmo: I object to that upon the ground it calls for the conclusion of the witness. The question is what conditions did they work under. That covers a multitude of things. The Court would never know what the conditions were.

The Court: Yes, I think it would be best to have the witness detail what the conditions were in 1955 and what they were afterward.

Q. (By Mr. Etter): What were the conditions obtaining under the Hanford agreement in 1955 as far as your union was concerned?

(Testimony of Charles J. Knapp.)

A. Our wages at that time was \$2.90, I think, and they received that pay. They received \$2.62½ isolation pay both in '55 and '56. They also had free bus transportation available in '55 and up to the work stoppage and have since on the job.

Q. Were there any other factors that you recall under which your men were working in 1955?

A. Well, the wage schedule was uniform up to the time—yes, the same wage schedule with fringes. The grinding pay, premium pay for grinding, \$1.58 was payable in '55 and also '56; and swinging scaffold pay, bo'sn chair pay; and the journeymen's wage, the foremen's rate, all those were uniform. [673]

Q. I see.

The Court: This isolation pay, was that for work behind the barrier in the Area?

A. Yes, sir.

Q. (By Mr. Etter): The isolation pay was for what they call behind the barrier?

A. Yes, sir.

Q. I see. When your men worked for Morrison-Knudsen, will you tell what the situation was with regard to the arrangement under which they worked then?

A. You mean after January 1st?

Q. Yes.

A. They continued to work—I mean to say, when they started to work, they worked under the same conditions as they would have worked in 1955.

(Testimony of Charles J. Knapp.)

Q. I see. In other words, you are talking now and saying that was with respect to pay and these things that you have mentioned?

A. Yes, sir.

Q. And, likewise, it is with respect to isolation pay and with respect to bus transportation?

A. Yes, sir.

Q. Is that correct? A. That is correct.

Q. All right. Did you attend any of the meetings with the [674] Hanford Contractors Negotiating Committee between the latter part of December and the time of the work stoppage?

A. I don't think I missed many, possibly not more than one or two.

Q. I see.

A. Of the meetings that I was interested in. They met, there was some meetings held with unions on other business that I didn't attend, but those meetings that included the Teamsters and the Operators, I attended most of them.

Q. In other words, where there were meetings with the Hanford Contractors Negotiating Committee, they were, as I understand it, usually held with your union, the Teamsters, and the Engineers?

A. That's right.

Q. Is that correct? A. I attended those.

Q. Do you recall, Mr. Knapp, how many of those meetings, if you can remember, were held between the latter part of December, say after December 31st, and prior to the date of the work stoppage, which was March 22nd, 1956?

(Testimony of Charles J. Knapp.)

A. I don't remember how many. There were very few. There was some little informal meetings, discussions. There was very few meetings held.

Q. Could you tell me whether or not usually the same [675] people were present at the meetings?

A. Yes, that is true.

Q. And who would be there on behalf of the three unions to which you have reference, that is, the Engineers 370, Teamsters 839, and the Cement Finishers?

A. Well, Sewell Davis, of course, attended as a rule or sent his assistant, Mr. Lewis, or Mr. Griffin. I didn't have any assistant so I had to attend all of them.

Q. I see.

A. But William Dunn represented the Operating Engineers and Mr. Rossman, I believe, attended two or three meetings after December 31st with us.

Q. I see. Now——

A. And Mr. Hollingsworth was also at a meeting or two.

Q. Mr. R. L. Hollingsworth? A. Yes.

Q. Now, Mr. Sewell Davis is now deceased, is that correct? A. That's right.

Q. He passed away about the middle of 1956?

A. Yes.

Q. And his place has been taken by Mr. Bob Lewis and he is here? A. That's right.

Q. Is that correct?

A. That is correct. [676]

(Testimony of Charles J. Knapp.)

Q. Now, at any of these meetings with the Hanford Contractors Negotiating Committee after the end of December and prior to the work stoppage of March 22nd, was there at any time ever any representative of Morrison-Knudsen present?

A. Mr. Reed was present at some of the meetings. I don't know how many, but he was present at some of the meetings.

Q. Mr. Reed, who is the project manager——

A. Yes, sir.

Q. ——for Morrison-Knudsen?

A. Yes, sir.

Q. And the same Mr. Reed who testified here the other day? A. That's right.

Q. Who other than Mr. Reed attended those meetings on behalf of the Hanford Contractors Negotiating Committee?

A. Well, Mr. McReynolds of the J. A. Jones Company.

Q. Mr. McReynolds——

Mr. DeGarmo: Just a minute. That question that was asked, I don't want the record to stand as it is without showing an objection. The question was, "Who else other than Mr. Reed attended the meeting on behalf of the Hanford Contractors Negotiating Committee?" which creates the inference that Mr. Reed was a member of the Hanford Contractors Negotiating Committee. [677]

Mr. Etter: I agree with Mr. DeGarmo and I think——

(Testimony of Charles J. Knapp.)

The Court: It will be understood that the question is corrected accordingly.

Mr. Etter: That's right, yes.

Q. What I meant to say, was Mr. Reed there?

A. Yes.

Q. Then there were certain other men there who represented or were representing the Hanford Contractors Negotiating Committee? A. Yes, sir.

Q. And you named one of these men as Mr. L. E. McReynolds? A. Yes, sir.

Q. And Mr. McReynolds was who?

A. He is project manager for the J. A. Jones Company. They have minor construction at Hanford.

Q. Mr. McReynolds for the J. A. Jones Company? A. Yes, sir.

Q. You were here yesterday when we were advised that the J. A. Jones Construction Company during that time was also a member of A.G.C?

A. I heard.

Q. Mr. Guess told us about that?

A. I heard that yesterday, yes, sir.

Q. This is the same J. A. Jones Company that Mr. McReynolds—— [678] A. Yes, sir

Q. Yes. And he was sitting there as a member of the Hanford Contractors Negotiating Committee?

A. We were told that he was a member, he had been a member before on the committee, and——

Q. But he sat in on these meetings?

A. Yes, sir.

Q. Who besides Mr. McReynolds?

(Testimony of Charles J. Knapp.)

A. Well, there was Mr. Cochran, who was project manager for the L. H. Hoffman Company, and Mr. McCaffree, the executive secretary.

Q. Mr. McCaffree, is that correct?

A. Yes, sir.

Q. I see. Do you recall that the personnel of that committee changed other than these three men or were there more?

A. It changed quite a little because there was so few contractors on the project at the time.

Q. I see. A. They were of the principals.

Q. I see. And so it was Mr. McCaffree, Mr. Cochran, and Mr. McReynolds, as I understand it, is that correct?

A. I believe Floyd Garrett was there a few times with the Sound Construction in the early part of the negotiations.

Q. Floyd Garrett of Sound Construction? [679]

A. Yes.

Q. I see, in the early part of the negotiations.

A. But Sound Construction finished up their job and I think Floyd was only there a few times.

Q. Can you tell us generally what these discussions concerned?

A. Yes, the Hanford Contractors Committee were trying to get us to agree that the A.G.C. contract was the better agreement for us. We had many meetings on that and——

Mr. DeGarmo: May it please the Court, in order that I won't have to make a continuing objection or a continuous objection, I wish at this time to show

(Testimony of Charles J. Knapp.)

an objection to any conferences held and any statements made at conferences held between the Hanford Contractors Negotiating Committee and any labor organization upon the ground that they are not binding or in any way shown to be binding upon the Morrison-Knudsen Company, inasmuch as we were not a member of the organization or otherwise connected with it.

Mr. Etter: It has already been testified that Mr. Reed of Morrison-Knudsen was at these meetings.

The Court: In cases where a representative of Morrison-Knudsen, the plaintiff here, was present, I think you may, otherwise not.

Mr. Etter: Yes, yes. [680]

Mr. DeGarmo: For the purpose of showing what was said, but not to be binding?

The Court: Oh, well, yes.

Mr. DeGarmo: The testimony is that Mr. Reed was an observer and there is no contrary testimony; that he merely sat in on these meetings as an observer.

The Court: The Court has in mind that that is his testimony and that is a matter that will have to be decided.

Mr. DeGarmo: The thing that bothers me is unless they will indicate which meeting that Mr. Dunn was present, then I don't know how——

The Court: Mr. Reed?

Mr. Etter: Mr. Reed.

Mr. DeGarmo: Or Mr. Reed, rather, was present——

(Testimony of Charles J. Knapp.)

Mr. Etter: We will try and do that, if we can. The one thing is that I have this, so we don't get into any difficulty later. Counsel, I gather, is making some point on the fact that we haven't shown proof that there was any authority in the Hanford Negotiating Committee or no authority from Morrison-Knudsen and, if I understand, he is claiming there must be some showing of their authority.

Mr. DeGarmo: Yes, I am contending that they had no authority as far as Morrison-Knudsen Company. [681]

Mr. Etter: Yes. In view of that, it is going to be necessary to go back into the history of this project. I just want you to know that that is the position, just to prove that point. Well, I notice it is——

The Court: I have a long distance telephone call. We may as well recess now until 2:00 o'clock.

(Whereupon, the trial in the instant cause was recessed until 2:00 o'clock p.m., this date.)

June 13, 1957

(Whereupon, the trial in the instant cause was resumed pursuant to the noon recess, all parties being present as before, and the following proceedings were had:)

The Court: I'm sorry to be late, gentlemen. I had a dental appointment that ran over. Fortunately, this is the last one of the series, at least I will not have an excuse for being late next time. [682]

CHARLES J. KNAPP

having previously been duly sworn, resumed the stand and testified further as follows:

Direct Examination
(Continued)

The Court: Let's see, this is direct examination?

Mr. Etter: Yes, direct of Mr. Knapp. [683]

Q. To go back a little, Mr. Knapp, I think you told me that you had been connected in some way with the building trades in the Pasco-Kennewick area since about 1943 when the work began on the Hanford Area? A. Yes, sir.

Q. I want to ask you, at that time, did you, besides representing your Local and acting as secretary of the Pasco-Kennewick Council, did you have any other position in '43 or '44 or '45?

A. Not with labor, but I was the labor co-ordinator on the Project in the latter part of 1943, the year of '44 and '45.

Q. And you were appointed as a labor co-ordinator by whom?

A. Under Secretary of War Patterson.

Q. You were labor co-ordinator then for how long?

A. About nearly all of '45, this last half of '43, all of '44, and most of '45.

Q. And all of '45? A. Yes.

Q. Approximately two and one-half years?

A. About that, yes, sir.

(Testimony of Charles J. Knapp.)

Q. And during the time you were labor co-ordinator, what were your duties in that position?

A. Well, to make decisions of disputes, through disputes and decisions over jurisdiction of work between unions, [684] between unions and the contractors, where there is a dispute between a steward or men on the job and supervision, I was called in to make settlement on that. I was also called in to make decisions on jurisdictional disputes and anything that had to do with labor disputes or trouble on the job.

Q. I see. And that work applied, did it, to the entire area? A. Yes.

Q. And to all of the contractors, subcontractors, and employees? A. That's right.

Q. And how many men at times did this cover, at least that work you were doing?

A. I think as many as 75,000 men.

Q. At one time? A. Yes, sir.

Q. And during the time that you acted as a labor co-ordinator for two and a half years, was there any work stoppage at all?

A. There was no strikes. The only work stoppages we had was just as long as it took me to go out to Hanford, inspect the work, and make a decision.

Q. I see.

A. Very short duration, all of them. [685]

Q. And you continued then, not only with that work, with that experience, but you continued then to be associated with that project in one way or an-

(Testimony of Charles J. Knapp.)

other up until the present time? A. Yes.

Q. In the capacity that you have already described?

A. Well, I was not co-ordinator after '45, of course.

Q. No, but in the other capacities?

A. Yes.

Q. Representing your local and the building trades council? A. That's right.

Q. Now, in 1952, was there a meeting, an area meeting, between the A.E.C., the unions, and the contractors, both on the job and prospective contractors? A. Yes.

Q. Where was that meeting?

A. The meeting was held in a building near the administration building in the village of Richland.

Q. Who presided over that meeting?

A. The first meeting was presided over by David Shaw, who was then the manager for the A.E.C.

Q. He was a resident manager of the project?

A. Yes.

Q. And do you remember how many contractors, employers, we'll say, unions, and otherwise, were represented along [686] with representatives of the A.E.C.?

A. I don't know how many there were. However, Mr. Shaw had told me previously that he was inviting more than 200 contractors.

Q. I see. And do you know whether those contractors that were there were all contractors then employed in the Hanford Works Area?

(Testimony of Charles J. Knapp.)

A. Oh, no; there was a very few employed there at that time.

Q. And were there a number of contractors there that were not working there, you might call prospective contractors? A. Yes; that is true.

Q. Was the representative of the plaintiff in this action present that you remember?

A. I remember that Ray Fortune was there. I talked with Ray several times that day.

Q. During that day? A. Yes, sir.

Q. And he was the man who, I think, Mr. Knack said preceded him? A. Yes, sir.

Q. The labor relations man with certain jurisdiction for the plaintiff?

A. Yes, sir. [687]

Q. Is that correct? Was there discussion of the contractual relations between unions and employers, prospective and present, held at that meeting?

A. Yes.

Q. Was that participated in by the contractors, present, prospective, representatives of the union, and Mr. Shaw and his aides and associates?

A. Yes.

Q. I see. Do you recall that any definite agreement as to the contractual relations to exist on that project were stated at that meeting by Mr. Shaw or anybody else, and, if so, will you tell us what was said?

A. Well, the question was put at the time as to whether this agreement would cover all contractors who might come on the job. We had had some discussions on that before, and Mr. Shaw stated at the

(Testimony of Charles J. Knapp.)

meeting that if labor and management, or the committees from those two groups, could write a satisfactory agreement, that the agreement would cover all contractors who come on the Atomic Energy jobs at Hanford.

Q. Do you know whether——

Mr. DeGarmo: Just a minute, pardon me, Mr. Etter.

Mr. Etter: Yes.

Mr. DeGarmo: I am not objecting to this [688] testimony. If I understand the purpose of this, it is being offered in an attempt to show that Morrison-Knudsen Company was a party to the Hanford Works Agreement?

Mr. Etter: That is correct.

Mr. DeGarmo: Well, if that is the purpose of it, just as long as it is limited to that purpose, I am not objecting.

The Court: Yes; all right.

Mr. Etter: No; I will tell you definitely that is the purpose.

Q. Did Mr. Shaw say or suggest or direct any manner in which this was to be accomplished?

A. Later in the meeting, before the meeting adjourned and before Mr. Shaw left the building, I talked with Mr. Shaw about the statement he had made and he reassured me——

Mr. DeGarmo: Just a minute. Was any representative of Morrison-Knudsen Company there at the time? A. With Mr. Shaw and I?

Mr. DeGarmo: Yes.

A. No, sir.

(Testimony of Charles J. Knapp.)

Mr. DeGarmo: Then, I object to that upon the ground it is pure hearsay and not binding on this plaintiff. [689]

The Court: No; I shouldn't think it would be.

Mr. DeGarmo: I want to also first show my further objection to this line of questioning upon the ground that it is contrary to the terms of the written document. We have before the Court the agreement between the Atomic Energy Commission and Morrison-Knudsen Company, Inc., which specifically states the binding effect of the Hanford Works Agreement upon the plaintiff. It says as long as that agreement is in effect, we will abide by the conditions. That was a written agreement which we have with the A.E.C. Therefore, any oral statement that Mr. Shaw or anybody else connected with A.E.C. may have made in 1943 certainly is not binding upon us.

Mr. Etter: Well, I think that——

Mr. DeGarmo: I thought we were trying to show the authority of the Hanford Contractors Negotiating Committee and this testimony is not relevant to that.

Mr. Etter: Well, I think it may be, myself.

The Court: Well, if it is anything——

Mr. Etter: This personal thing, that is correct.

The Court: ——it could be binding upon the plaintiff; of course, it wouldn't be unless some representative of the plaintiff were present. [690]

Mr. Etter: That's right. The reason I bring this up, your Honor, I don't know whether you recollect it, and I might be clumsy the way I am getting

(Testimony of Charles J. Knapp.)

at it, but in the case tried in Yakima, if your Honor will remember, Graham, I think, versus Pasco-Kennewick Building Trades, No. 917, Mr. Knapp testified as to the relationship of the contractor coming on the project and at that time, if you recall, he said as preliminary to the actual carrying out of this agreement over the next five years by the appointment of a committee, which Mr. Knapp testified down there that Mr. Shaw directed be appointed from each side, that he made this statement of this personal statement and then followed it, showing that that had occurred, and the government and the other people there, that is, the attorneys for General Electric and the A.E.C., took a recess and called Mr. Shaw to verify the statement of the testimony that Mr. Knapp had made, if you recall, and, as I understand, we are advised that that was in accord with what he says——

Mr. DeGarmo: I don't understand anything like that has anything to do with this case.

Mr. Etter: I don't say that his statement is binding on plaintiff, Morrison-Knudsen, but I do want to show pursuant to that what the practice was in line with showing that these people were working on the project in [691] December of 1955 and January, February and March under this agreement. That is the only purpose I have; nothing further.

The Court: Well, couldn't you show that without resorting to hearsay statements?

Mr. Etter: I think I can.

(Testimony of Charles J. Knapp.)

The Court: Of persons out of the presence of any representative of the plaintiff?

Mr. Etter: Yes; I believe I can.

Q. Mr. Knapp, in accord with this meeting, was a committee formed by the Hanford Contractors?

A. A committee was appointed as the result of that meeting.

Q. I mean, as the result of that meeting?

A. Yes.

Q. And has such a committee functioned on behalf of the Hanford Contractors since that time?

A. Yes.

Q. Mr. Fortune was present during that part of the discussion relating to the appointment of bargaining committees, was he not?

A. He was at the meeting and I am——

Q. Well, he was at the meeting?

A. I am only guessing he was present when Mr. Shaw made the statement.

Q. I see. Well, in any event, that was done, is that [692] correct? A. Yes.

Q. And was that practice carried out then in 1952 that you know of personally? A. Yes.

Q. And in '53? A. Yes.

Q. And 1954? A. Right.

Q. And in 1955? A. Yes.

Q. And was the committee designated at that time as the Hanford Contractors Negotiating Committee? A. Yes.

Q. I see. How many composed the committee?

A. It was recommended that not more than five

(Testimony of Charles J. Knapp.)

on either side be used, and that was carried out pretty close all the way through.

Q. And can you tell me whether those committees since 1952 have negotiated agreements?

A. They have. There has been different committees because there was different contractors on the job, but there has always been a committee.

Q. I see. In those negotiations, were the union representatives advised of the names of the contractors on [693] the project?

A. The contractors' group and the building trades exchanged letters naming the men on their committee.

Q. No, no; what I am asking you, did the committee advise the labor committee of the contractors that they represented at any time by name?

A. No.

Q. No. In other words, these negotiations were carried on by the committees, is that right——

A. Yes; that is correct.

Q. ——without knowledge of the number or names of the contractors?

A. Well, the numbers didn't mean anything because we never knew who was going to be on the job and when.

Q. I see. Now, when these agreements were consummated, were the agreements, as far as you know, carried out in accord with the agreement made between the Hanford Contractors Negotiating Committee and the unions, were they carried out by all contractors on the project?

(Testimony of Charles J. Knapp.)

Mr. DeGarmo: Now, at what time, Mr. Etter?

Mr. Etter: In 1952.

A. There was only one agreement and that was the Hanford Works Agreement and it affected all people on the project.

Q. That is what I am saying, did all the contractors pay in accord with that agreement? [694]

A. Oh, yes.

Q. They did in '52? A. Yes, sir.

Q. And was that likewise true in '53?

A. Yes, sir.

Q. And in 1954? A. Yes, sir.

Q. And in 1955?

A. That's right. Since '47, in fact.

Q. Since 1947? A. Yes, sir.

Q. This was a formal agreement I am talking about in 1952.

A. '52 was the new agreement, because the old agreement was one that Mr. Shaw objected to and wanted a new agreement written in '52.

Q. I see. But there has been this Hanford Agreement that you are talking about upon which all of the contractors from the project have proceeded since 1947? A. That's right.

Q. And the one you are referring to now is the one that Mr. Shaw proposed? A. '52.

Q. Beg pardon? A. '52 agreement.

Q. '52 agreement? [695] A. Yes, sir.

Q. Were you a member of the negotiating committee for the unions in 1955? A. Yes.

Q. You were? A. Yes, sir.

(Testimony of Charles J. Knapp.)

Q. And in 1955, did you enter into negotiations with other union representatives with the Hanford Contractors Negotiating Committee?

A. Yes, sir.

Mr. DeGarmo: Well, the answer was before I moved, but I move that the answer be stricken upon the ground now that we are getting into prior negotiations again.

Mr. Etter: This is about the work that they were doing and the contract that they say they were working under.

Mr. DeGarmo: We weren't on the job in 1955 until November 28th, according to the testimony.

Mr. Etter: That's right.

Mr. DeGarmo: You have covered the whole year of 1955. I object to the question and the answer and ask that the answer be stricken upon the ground it is getting into negotiations leading up to the contract.

The Court: Let's see, what was the [696] question?

(Question and answer read.)

The Court: I will let the answer stand. You are still talking about the Hanford——

Mr. Etter: Hanford, that is correct.

The Court: ——Negotiating Committee?

Mr. Etter: That is correct, only the Hanford Negotiating Committee.

The Court: All right.

Q. (By Mr. Etter): Who else composed the union representatives other than you, Mr. Knapp?

(Testimony of Charles J. Knapp.)

A. Representatives of the Teamsters and Operating Engineers, at the end of negotiations. At the beginning of the negotiations, I think the Iron Workers and one or two others, but they closed or completed this negotiations and it wound up by having just the three remaining unions.

Q. And you named this morning, I think, the representatives of the employers group. There were Mr. McReynolds of J. A. Jones and Company, Mr. Cochran of L. H. Hoffman, and Mr. McCaffree, who was the executive secretary? A. Yes, sir.

Q. Who represented the Hanford Contractors Negotiating Committee, is that correct?

A. Yes, sir.

Q. And these negotiations, were they carried on in the [697] latter months of December, say, of 1955, that you recall? A. Yes.

Mr. DeGarmo: I wish my objection to go to any negotiations leading up to a contract. This testimony, I can't see how it can have any probative value as to the authority of the Hanford Contractors Negotiating Committee to represent Morrison-Knudsen Company. I can't see what connection there can be between the question and the answer and the fact that he is trying to prove.

Mr. Etter: Well, it is my understanding that the Hanford Contractors Negotiation Committee was the committee that from year to year effected the Hanford Agreement that bound all contractors on the project, including Morrison-Knudsen when they bid this job.

(Testimony of Charles J. Knapp.)

Mr. DeGarmo: Who says it bound all contractors other than yourself?

Mr. Etter: Well, I do say it, that is my contention. Then if you want to make it that way, that is my contention.

Mr. DeGarmo: I thought that is what you were trying to prove.

Mr. Etter: That's right, that is what I am trying to prove. [698]

Mr. DeGarmo: But you can't prove it by the fact that somebody negotiated, that is my point, the contract.

Let me call your Honor's attention to something that is an exhibit here, which is an admitted exhibit, this collective bargaining agreement. I am referring now—I had better refer to the one which is in evidence because then there can't be any question that I am reading the right language.

This is the construction collective bargaining agreement, Hanford Works, State of Washington, plaintiff's Exhibit 6:

“This collective bargaining agreement (hereinafter called the agreement) by and between the signatory construction contractors, representing and acting for contractors who presently or during the life of this agreement become signatory to this agreement * * *”

The Court: That is the area agreement you are reading from?

Mr. DeGarmo: No; I am reading from the Hanford Works Agreement.

The Court: Oh.

(Testimony of Charles J. Knapp.)

Mr. DeGarmo: This is the Hanford Works [699] Agreement. This is the 1952 agreement that he says bound everybody. It says:

“This collective bargaining agreement (hereinafter called the agreement) by and between the signatory construction contractors, representing and acting for contractors who presently or during the life of this agreement become signatory to this agreement * * *”

Now, that, I think, is perfectly plain as to who became bound contractually by this document, and this, I think, is signed by Mr. Knapp, possibly, for one of the unions. I am not sure of that, but let's see. In any event, the agreement speaks for itself as to who is bound by it.

Mr. Etter: I have a further exhibit I want to call attention to.

Mr. DeGarmo: If counsel contends that somebody else is bound by it other than who signed when it didn't purport to bind anybody except those who signed, and he hasn't shown yet that Morrison-Knudsen Company ever signed it. We agreed contractually with the A.E.C. that as long as it was in effect, we would abide by it.

Mr. Etter: Well, my problem arises as long as it was in effect, they would abide by it. Now, let's assume that this negotiating committee reached an agreement [700] with the crafts involved on, say, April of 1956 and signed a Hanford Agreement. Now, it would seem to me that Morrison-Knudsen would be bound by that Hanford Agreement. Counsel, apparently, is of the opinion that they appar-

(Testimony of Charles J. Knapp.)

ently wouldn't be bound by it, as I understand it, and, of course, you can't breach an agreement until you first negotiate for it. Now, the agreement is in the bid specifications that they would be bound by any agreement, and yet——

Mr. DeGarmo: That isn't what it says.

Mr. Etter: What does it say?

Mr. DeGarmo: Read the language of the agreement.

Mr. Etter: Well, rather, I would like to know, I thought that is what you said.

Mr. DeGarmo: It says as long as that agreement is in effect, we will abide by the rates established by the A.E.C.

The Court: How does it refer to the Hanford Works Agreement?

Mr. DeGarmo: I think counsel can call your Honor's attention to the exact language.

Mr. Etter: It is the C something. I made a note of it.

Mr. DeGarmo: It is in the early part. [701]

Mr. Etter: Is it in the early part? I thought it was in the C something.

Mr. DeGarmo: No; it is in the early part up here. There isn't a word in there that we will abide by it.

Mr. Etter: This isn't what I had in mind, counsel. I think I made a note of it. Oh, yes, yes: "During the life of the Hanford Works Agreement, the contractor agrees to pay laborers and mechanics," so and so, "the scale of wages and allowance pre-

(Testimony of Charles J. Knapp.)

vailing at the Hanford Works, including all terms of any modification thereof, as determined by the commission.”

Is that correct?

Mr. DeGarmo: That is what the contract says and that is what we agreed to do. As long as it was in effect, we would abide by the scale established by the commission, not by this agreement.

The Court: It seems to me if you have here the situation of the plaintiff agreeing to abide by the terms of the Hanford Works Agreement so long as it was in existence and we have the written agreement, I don't see where it is any help to the Court to go into the negotiations that preceded the making of that agreement.

Mr. Etter: Except to show, as I thought your Honor recalled, that these crafts and defendants were [702] working under that agreement at the same time they were negotiating with Hanford in 1955.

The Court: Well, you have shown that, that they were working under the agreement, but that is a different thing from going into the negotiations that led up to the making of the Hanford Agreement.

Q. (By Mr. Etter): In other words, as of December, then, of 1955, the employees, or rather the union employees, were working in pursuance of the Hanford Agreement? A. Yes, sir.

Q. I see.

The Court: I understand the testimony of the witness, I don't know, perhaps he didn't testify to

(Testimony of Charles J. Knapp.)

that, but it was my understanding that that was true from '52 to '56, inclusive, that you were always working under that?

A. Yes, sir; that's right.

The Court: The Hanford Agreement?

A. Really, since '47.

The Court: Yes; you did say since '47, although there was a modification of it in '52?

A. Yes, sir.

Q. (By Mr. Etter): And under the modification from '52 to the first of 1956, that is, the first day?

A. Yes. [703]

Q. And did you continue to work until March the 22nd under the terms of that agreement?

A. Yes, sir.

Q. In accord with the terms of it?

A. Yes.

Mr. Etter: I think that is all, Mr. Knapp.

Cross-Examination

By Mr. DeGarmo:

Q. Let's start at the end, Mr. Knapp.

A. All right, sir.

Q. You say that your people worked until March 22nd, 1956, under the terms of Plaintiff's Exhibit 6; is that your testimony?

A. I will make——

Q. No, no; you can answer that either yes or no.

A. I will say yes.

Q. All right; will you tell me what pay that

(Testimony of Charles J. Knapp.)

agreement provided for your cement finishers for 1956?

A. A journeyman's hourly rate?

Q. Yes, sir.

A. Well, I think then we were \$2.90.

Q. Well, are you sure of that?

A. Well, let's see now—\$2.85.

Q. Will you look at the agreement? [704]

A. Wait a minute—\$2.90 is right, sir.

Q. Will you look at the agreement and see if you can find the journeyman hourly rate stated there for the cement finishers?

A. It should be in the index. You asked me on '55?

Q. I am asking you in 1956. You said they worked under that agreement until the 22nd day of March, 1956. I want to know what wage they were receiving, if that agreement was in effect, on March 22nd of 1956?

A. Well, the agreement I have here in my lap was not effective, because it is \$2.68 here. This is a '53 agreement, schedule.

Q. Well, where did you have some other agreement, then? What agreement were you working under?

A. There is a new wage schedule since \$2.68.

Q. Do you have it as a contractual obligation?

A. We most certainly negotiated it.

Q. Well, do you have in your possession a copy of any agreement, Hanford Works Agreement, under which you were to be paid \$2.75 or \$2.90, or whatever it was, in 1956?

(Testimony of Charles J. Knapp.)

A. I don't have one with me. I can borrow one from Mr. Guess or somebody here. I don't have my papers with me at all.

Q. Well, are you positive, Mr. Knapp, what the wage scale [705] was for a cement finisher at Hanford Works in March of 1956?

A. Well, we negotiated 15 cents and we got \$3.00. That would be \$2.85.

Q. What was the approved rate by the Atomic Energy Commission for cement finishers as of January, 1956?

A. Well, Davis-Bacon is the one that approves the rate there and the Atomic Energy Commission is advised of it.

Q. Well, that wasn't the question that I asked you, I asked you what the wage rate was, the approved wage rate, as of January, 1956?

A. It would be \$2.85.

Q. \$2.85? A. I think so. I could be wrong.

Q. You could be wrong? A. Uh-huh.

Q. When you testified on direct examination that it was \$2.90, could you have also been wrong about that?

A. Once I am wrong at \$2.85, I am possibly even wrong at \$2.90, yes, sir.

Q. Well, I am showing you Plaintiff's Exhibit 1 for identification to refresh your memory a bit. Will you look at it and tell me what the approved wage rate was in the contract between the Atomic Energy Commission and [706] the Morrison-Knudsen Company, Inc.?

(Testimony of Charles J. Knapp.)

A. Well, this is \$2.75, but if this is the '56——

Q. Well, was that a '56 rate or was that a '55 rate, or what rate was it?

A. Well, I would say it was a '56, because our next step was \$2.90 and then to \$3.04.

Q. Well, when did you get the \$2.90? When did you get the \$2.90, Mr. Knapp? That is 15 cents; when did you get the \$2.90?

A. Yes, sir. Well, I will have to check back and see when this \$2.75 went in effect.

Q. Well, that contract is dated November 25th, 1955, that you hold in your hand, Plaintiff's Exhibit 1. Would that indicate to you that that was the approved rate in 1955 as of November 25th, 1955?

A. Yes; it would.

Q. Well, was that the wage scale which you continued to receive until March 22nd of 1956, and if you are not sure of your answer, I want you to check?

A. '57, '58. Wait a minute, now, we negotiated a three-year agreement in '56 and didn't take effect until—I believe became effective in April. That was—yes, sir, this was right at that time.

Q. Is it, then, your testimony that \$2.75 was the wage rate of a cement finisher journeyman during all of 1955 and [707] until subsequent to March 22nd, 1956? Is that your testimony?

A. I think it was in April that the rate became effective, the new rate.

Q. Well, I want you to be positive about that so that you are willing to state that as your testi-

(Testimony of Charles J. Knapp.)

mony. Now if you have any doubt about it, I want you to check it.

A. Well, I would like to check it with our agreements rather than this. We have agreements here.

Q. Well, do you have the agreement where you can check it?

A. I don't have one here, unless someone else has some A.G.C. agreements.

Q. Well, now, what has the A.G.C. agreement got to do with it?

A. Well, it would be in the A.G.C. agreement.

Q. Do you mean that the cement finishers had an agreement with the A.G.C.?

A. Builders Chapter, A.G.C., yes, sir.

Q. Negotiated when?

A. We have had agreements with them since about around 1950.

Q. And did you have one in 1956?

A. Yes, sir.

Q. And when did you negotiate the one in 1956?

A. Negotiated in the fall of 1955, but our agreement covered 1956, '57 and '58, so we negotiated in the fall [708] of '55.

Q. Well, are you telling us that the A.G.C. agreement, which was negotiated in the fall of 1955, resulted in a wage increase to journeymen cement finishers on the Hanford Project during the year 1956?

A. When it was approved by the Davis-Bacon, it was effective on all jobs, whether it was Hanford or anywhere else. The A.G.C. sends that wage rate,

(Testimony of Charles J. Knapp.)

approved wage rate, to the Davis-Bacon Division, United States Department of Labor, and then they notify all government and state agencies that that will be the rate on contracts.

Q. Now, perhaps we can get to it another way, Mr. Knapp, was there a Hanford Works agreement after January 1st of 1956?

A. Not a signed agreement, no, sir.

Q. Well, was there any agreement, signed or unsigned?

A. We contend—well, now, wait a minute. We worked under the terms of the Hanford Agreement of '55, yes, sir.

Q. Well, you had been advised by the Hanford Contractors Negotiating Committee that, as far as the contractors were concerned, whatever they represented, which is a little indefinite, I will admit, that the agreement was terminated as of December 31, 1955; isn't that correct?

A. Yes, sir; it said until a new agreement had been reached. [709]

Q. Did it say that it was terminated until a new agreement could be reached?

A. One clause said that it was terminated and another clause that we continue to negotiate until such time as we had reached an agreement, or words to that effect.

Q. Well, were you working under an agreement, then, or under the language which followed the termination?

(Testimony of Charles J. Knapp.)

A. As far as I am concerned, I was working under the Hanford Agreement.

Q. Well, you didn't regard it as having been terminated, then, is that your testimony?

A. For practical purposes, no.

Q. Well, what about impractical purposes, did you regard that the statement that it is hereby terminated as of December 31, 1955, meant something other than what it said?

A. Well, if we hadn't of continued working under the agreement, I would have thought so, yes.

Q. Well, did the contractors negotiating committee in the notice tell you that you were to continue to work under the agreement?

A. We continued working under the terms of the agreement.

Q. Yes, but it didn't say under the agreement, did it?

A. No. No, I don't think it does, just those words, no, but it did say we would continue to meet and negotiate. [710]

Q. Well, let's assume, Mr. Knapp, that you never could reach a meeting of minds, was this to go on forever and ever?

A. I don't think forever, but we have continued on for several months before reaching an agreement.

Q. Well, now, I have here in my hand—I appreciate that you are not a defendant in this case, although we wish you were——

A. Yes, sir.

Q. We didn't happen to have an agreement with

(Testimony of Charles J. Knapp.)

you, but I have a motion here to amend by the unions who are defendants in which they say, and this is their motion:

“Beginning about March 8, 1956, the plaintiff sought to apply to said work the provisions of certain other contracts, namely, Exhibits A and B attached to plaintiff’s original complaint, less favorable to the defendants’ members.”

Do you recognize, Mr. Knapp, that as of March 8, 1956, your union was also told—I am talking about the cement finishers now——

A. Yes, sir.

Q. ——that as of that date, from that date on, at least as far as the members of the A.G.C. were concerned, you were working, the A.G.C. members were working, under the A.G.C. [711] agreements?

A. I wasn’t notified. I knew, however, that others were.

Q. Well, you were present at the meeting when that was stated, were you?

A. Yes; I was at an A.G.C. meeting.

Q. Yes. You were present at a meeting when it was stated by the A.G.C. representatives that as far as they, as far as the members it represented, which they stated were two, from that date on they were working under the A.G.C. agreements, they were willing to consider hardship conditions; isn’t that correct?

A. I heard them say they would consider hardship conditions. We never knew what that meant, really.

(Testimony of Charles J. Knapp.)

Q. Well, you did a lot of talking in those meetings, didn't you?

A. Very little, sir, because I was not a signatory to their agreement. I did under the Builders Chapter meetings, yes, sir.

Q. Well, now, isn't it a fact, Mr. Knapp, that at the meeting of March 10th, at the meeting of March 19th, the meeting of March 21st, that you attended all three meetings?

A. I believe I did.

Q. And isn't it true that at each of those meetings, they were joint meetings of the Building Chapter, as well as [712] the Heavy Highway and Engineering Construction Chapter? Isn't that true?

A. Well, both chapters were represented there, yes, sir.

Q. Yes, Mr. Helvey was there and others on behalf of the Builders Chapter and Mr. Guess and others on behalf of the Heavy Highway and Engineering Chapter?

A. I think so.

Q. And you had considerable to say in those meetings, did you not?

A. I don't think so.

Q. Well, we will come to that in a few minutes.

A. Okay.

Q. At the recess, if we have one, Mr. Knapp, I want you to check the question of when there was a change in pay scale at the Hanford Works for cement finishers in the year 1956 and be able and be prepared to advise me when the court commences.

I want to turn now for a minute to this meeting

(Testimony of Charles J. Knapp.)

that you state took place on January 5th, 1956, at Pasco, is that correct? A. Yes, sir.

Q. And that was a meeting which had been called or had been requested, at least? I won't say called; it had been requested——

A. Uh-huh. [713]

Q. ——by Mr. Shirk, who was the secretary of the Pasco-Kennewick Building Trades Council, is that correct? A. Yes.

Q. And I believe you characterized that meeting as a pre-job conference? A. Yes, sir.

Q. Now, I would like for you, Mr. Knapp, to tell me—this meeting took place from approximately 3:00 o'clock until some time around—or, let's say, 2:30 to somewhere around 5:00 or 5:30?

A. Yes, sir.

Q. Will you tell me what subjects were discussed during the course of that meeting and, if you can, tell me in each instance who brought up the subject and who discussed it?

A. Well, there wasn't—at this particular conference there wasn't many items discussed. Mr. Knack introduced himself, told about the contract that they had. He explained that Mr. Reed would be the project manager, he told about how many carpenters and other crafts that he would use and about when there would be the hiring of those particular crafts. There wasn't much else explained there. There was a few questions asked. I don't remember just what they were. There were the usual questions that was asked at pre-job [714] confer-

(Testimony of Charles J. Knapp.)

ences. There was some story-telling and other things discussed. It was quite a—oh, just a usual get-together of men who are interested in getting a job started. There wasn't any particular business discussed up till the time that I pin-pointed two things that I was particularly interested in.

Q. And all of this that you have mentioned took place in approximately two and a half hours?

A. Yes, sir.

Q. Because, as I understand you, the conversation which you state you had with Mr. Knapp did not take place until the tail end of this meeting?

A. That's right. However, we discussed, oh, many things, where Mr. Knack had been, he told us of some of the experiences at different places. We discussed with Mr. Reed his experiences on the California job. Oh, there was many, many stories told and just an afternoon of getting acquainted, principally.

Q. And that is the extent of your recollection of that meeting except the very specific thing upon which you have testified?

A. Yes; there was only two things I was particularly interested in, because most of the other things were included in both agreements. They are very much alike with the exception of the two or three things in the [715] Hanford Works Agreement that A.G.C. agreement doesn't contain. One of them is isolation pay and, of course, bus transportation wasn't included in, either, but I was particularly interested in that.

(Testimony of Charles J. Knapp.)

Q. Well, now, this morning in answer to the question from your counsel as to what was covered under the Hanford Works Agreement, you stated that bus transportation was one of those items. That was an error, wasn't it?

A. Well, it never has been in the agreement, no, sir. I doubt that I said that, sir, because I knew better. We have never had it in the agreement since 1947. It has never been in any agreement since 1947.

Q. As far as your particular craft or the Operating——

A. Any other craft.

Q. ——Operating Engineers or the Teamsters?

A. That's right; no other craft, with the exception of two or three of the shop crafts. For instance, they have the Plumbers' busses written in, their transportation written in. Ours never did.

Q. Well, do you mean to tell me then that in spite of the fact that there was no contractual obligation on behalf of the employer to furnish bus transportation, that you were laying that down as one of the conditions of continued employment?

A. Yes, sir. [716]

Q. And you had repeatedly negotiated addendums to the Hanford Works Agreement without including that as one of the contractual items?

A. That's right.

Q. And you insisted, even before the Ching Panel, did you not, that that was one of the conditions of continued employment?

A. That's right.

Q. And it never was a contractual provision?

(Testimony of Charles J. Knapp.)

A. Never has been in an agreement, no, sir.

Q. And is not now?

A. No, sir; it isn't. We have never been without busses, sir, regardless of whether it was in the agreement or not.

Q. Well, do I understand, then, as far as you are concerned, that it doesn't make any difference that the written contract is, if you want it, you use that as a condition of continued employment?

A. That each time we have negotiated an agreement, the bus matter has been brought up and we have been assured by the contractors committee that it wasn't necessary to write it in, we had already had busses, and there wasn't any reason for writing it in. We have asked to have it written in at different times and the contractors said it wasn't necessary. [717]

Q. Well, they refused?

A. We took their word for it.

Q. They refused every time, didn't they, instead of just saying it wasn't necessary?

A. No, sir; they didn't refuse.

Q. All right. I want to give you another opportunity, Mr. Knapp, to tell me of any other items of discussion in this January 5th, 1956, meeting that you attended. You were there during the entire meeting, weren't you?

A. Yes, sir.

Q. You didn't leave the room?

A. I don't think I did; I don't remember that I did.

(Testimony of Charles J. Knapp.)

Q. And you can't recall any further items now than you have testified to?

A. I wasn't particularly interested in any items other than those two, because through habit contractors carry out the conditions of their agreements and there is so little difference between the Hanford Agreement and the A.G.C. agreement there wasn't any real point in discussing terms of the agreement.

Q. By the way, you mentioned that at the time of that meeting you knew that the Hanford Works Agreement was out or at least its status was very doubtful?

A. It was indicated by the contractors—we had been advised that it was terminated, yes, that is true, by [718] letter.

Q. Yes. And do you recall whether the subject of subcontractors was discussed that afternoon, Mr. Knapp?

A. That subject is always brought up in any pre-job conference. That is a matter of form. We want to know who their subcontractors are going to be if they know at the time.

Q. Well, was it discussed that afternoon and, if so, what was said about it?

A. I just don't know, sir. I am not concerned with subcontractors and probably didn't pay too much attention to it. I wasn't interested. The plumbers would want to know who the plumbing contractor was, the electricians would want to know who the electrical contractor was, but the union I rep-

(Testimony of Charles J. Knapp.)

resent don't have subcontractors, sir, and I didn't pay any attention.

Q. Yes. Well, now——

A. If I had been secretary, then I would have asked that myself.

Q. There is one thing I want to get fixed for the record, Mr. Knapp, that I am not clear on, and I may not have followed closely enough, but I tried to and missed it.

A. Yes, sir.

Q. I want to refer now to the period from November 1st, 1955—— [719]

A. Yes, sir.

Q. ——until March 22nd of 1956. What office, if any, did you hold in the Pasco-Kennewick Building Trades Council?

A. I was a delegate and a member of the executive board.

Q. Mr. Shirk was the secretary?

A. Yes, sir.

Q. And who was its president?

A. William Dunn.

Q. And he was present and actually presided at this meeting, as I understand it?

A. Yes; that is true.

Q. Well, were you at this meeting then representing the Pasco-Kennewick Trades Council?

A. I was representing at that meeting the cement masons, cement finishers.

Q. Well, were you at that time a business agent of the cement finishers?

A. Yes, sir.

Q. When did you become its business agent?

A. In May of 1943.

(Testimony of Charles J. Knapp.)

The Court: What union was that, did you say?

A. Cement finishers.

Q. (By Mr. DeGarmo): And did that Representation continue through this period that I mentioned from November 1st until March 22nd? [720]

A. Yes, I have been business agent continuously since May of '43 to the present time.

Q. Was there a representative or were there representatives at this meeting of the Operating Engineers? A. Yes, sir.

Q. Who were they?

A. William Dunn was there, because he was chairman, and Art Rossman was there.

Q. Now, I think you stated that Mr. Sewell Davis, who is now dead, and who was a representative at that time, business agent for the Local 839, was not at this meeting?

A. I thought he was, but I have learned since I came here that he wasn't. We read the list of names who were present at the meeting. The list was called in over the telephone from the records that they have in Pasco, and I understand that Davis was not included, but I thought he was there, so I was mistaken.

Q. Was there any representative of the Teamsters at that meeting?

A. I am not certain that there was.

Q. Well, you say you had the list of names read?

A. I don't have the list, the list was called in,

(Testimony of Charles J. Knapp.)

and I have learned that Davis wasn't, but I don't know who else was on the list. I do not have it. [721]

Q. It was not called to you, then?

A. No, sir.

Q. Now, when you originally testified on this matter, Mr. Knapp, did you state that this meeting or the discussion with Mr. Knack was after the general meeting?

A. I did say that and I should have described it in a different way. The general discussion or the pre-job conference, that business was over and then that is when I approached Mr. Knack with the questions in reference to isolation pay and bus transportation.

Q. As a matter of fact, you didn't correct your testimony in that respect until after I had made an objection, isn't that true, pointing out that you had stated that the conversation was after the general meeting?

A. The meaning was the same, but the words that I used were wrong, sir. It doesn't change the fact of when it actually happened.

Q. And then did you state that, "I told Mr. Knack that there were two points that I was particularly interested in and I would have to have the answer for the people that I represented"?

A. Yes, sir.

Q. Was that your testimony?

A. Yes, sir. [722]

Q. Now, you have told us that you at that time

(Testimony of Charles J. Knapp.)

were at the meeting representing the cement finishers as the business agent for the cement finishers?

A. Yes, sir.

Q. Well, was that the people that you represented?

A. I represented others in asking the question, because previous to this meeting the Operating Engineers and the Teamsters and myself had discussed this pre-job conference and we knew that we were going to have to have the answers to those two questions and I said that I would ask the question for myself, as well as the Operators and the Teamsters.

Q. Was it likewise true, Mr. Knapp, that you decided, or at least you testified, that when you said, "I represented," that you were referring to the Operating Engineers, the Teamsters, and the Cement Finishers after I had objected to whatever you agreed to on behalf of the Cement Finishers would not affect the other two crafts? That was when——

A. I qualified my answer in that statement then, saying that I had previously had a conference with these two unions and I would ask the question.

Q. Now I wish to ask you this: Did you tell Mr. Knack who you represented?

A. I don't think so. [723]

Q. You did not tell Mr. Knack that you were speaking for the Operating Engineers, did you?

A. No, sir.

Q. There were—— A. I don't think I did.

Q. There were two representatives in this meeting in the Operating Engineers, were there not?

(Testimony of Charles J. Knapp.)

A. Yes, sir.

Q. Both of them able to speak for themselves, one of them the chairman and Mr. Rossman the business agent, right?

A. Well, everyone there was qualified and capable to ask their own questions, yes, sir.

Q. And you did not tell Mr. Knack that you were asking the question for the Teamsters, either, did you?

A. No, sir; I don't think I did.

Q. Now, in order to make certain that I would not misquote you, Mr. Knack, I had the reporter transcribe what you said——

A. Yes, sir.

Q. ——and I want to read you this and then I want to ask you some further explanation (reading):

“He said that they would pay isolation pay and continue to furnish transportation. He said the Morrison-Knudsen Company had bid the job planning on paying isolation pay and [724] furnishing transportation, that was the way they figured the job.”

A. Yes, sir.

Q. How long did Mr. Knack say they would continue to pay isolation pay and furnish transportation?

A. He didn't say how long. That wasn't the point of the question at all; the question was, “Are you going to furnish free bus transportation and pay isolation pay on your job,” and the answer was, “Yes.”

Q. And he did not state any length of time?

A. No. Had we thought that he meant a month or two months, then we would have—we would have

(Testimony of Charles J. Knapp.)

wanted the answer, but the answer we got we were satisfied that he meant that he was going to continue paying it on the job.

The fact of the matter is Mr. Knack said he was not interested in what the other contractors were going to do.

Q. You didn't tell us about that this morning?

A. No; I didn't.

Q. Now, anything else that he said that you didn't remember this morning that you would like to tell us now?

A. Well, he wasn't interested in job politics.

Q. At the time of this meeting, Mr. Knapp, there was [725] considerable, let's say, disquiet on the Hanford Project about the discontinuance of the Hanford Works Agreement, was there not?

A. Everybody was worried about it, yes, sir, of those three crafts.

Q. Didn't Mr. Knack tell you when you asked him about this bus transportation and the payment of isolation pay that, inasmuch as Morrison-Knudsen Company was the new contractor on the job, that it was not going to be the one to upset the apple cart, so to speak, or to change conditions pending some determination of this dispute that then existed concerning whether it was to continue or be discontinued or whatever was going to happen to it, or words to that effect?

A. I remember distinctly that he said that he was not interested in what the other contractors were going to do. He said that they had bid the job

(Testimony of Charles J. Knapp.)

on isolation pay and free bus transportation and they were going to do it. They were going to do the job. He said they were particularly interested in coming in, getting the job done, and getting out again.

Mr. DeGarmo: Will you read the question that I asked the witness, Mr. Reporter, and let's see if we can have an answer to that either yes or no or perhaps a maybe. [726]

(Question read.)

A. I can't remember that particular conversation, sir.

Q. Would you say that it did not occur?

A. Well, not remembering it, I couldn't say that it didn't or did.

Q. Do you remember, Mr. Knapp, that Mr. Knack called to your attention the proposition that at such time as the unions were ready to start entering into agreements with contractors which would run for the life of the job, that then the contractor, Morrison-Knudsen Company, would be willing to deal on the same basis?

A. No, I don't remember any such conversation as that, no, sir.

Q. Do you recall that Mr.—well, let me ask you directly: Is it a fact that Mr. Knack told you in this same conversation which you have been relating that Morrison-Knudsen Company had an agreement with the Associated General Contractors and, therefore, if they were not required under the agreement and

(Testimony of Charles J. Knapp.)

the furnishing of bus transportation and of isolation pay was discontinued, that the A.G.C. contract would have to abide?

A. No, sir; he didn't say that to me. No, sir.

Q. Well, you didn't tell him that you were representing anybody who had an A.G.C. contract, did you?

A. No, sir. [727]

Q. You didn't have a contract with the A.G.C. Heavy Chapter, did you?

A. I haven't ever had and don't at the present time.

Q. Do you recall, Mr. Knapp, Mr. Knack pointing out to you, when you brought up the subject of isolation pay and bus transportation, that they couldn't guarantee what would be happening as to wages unless you were willing to—that they had an example of Table Rock Dam in which they had estimated a 32 per cent labor cost to a certain date and as of that date it had already gone to 47 per cent?

A. There wasn't any such conversation with me on that, because we didn't discuss wages. I didn't discuss wages with Mr. Knack. Wages are fixed, we were not negotiating with Morrison-Knudsen.

Q. Wages were fixed by whom?

A. Wages are fixed through negotiations with the contractors. In my case, with the Builders Chapter of A.G.C. I wouldn't discuss wages with Mr. Knack.

Q. Well, did you ever negotiate wages with the Hanford Contractors Negotiating Committee?

(Testimony of Charles J. Knapp.)

A. Never negotiated wages with them, wages were always negotiated outside. That is a government regulation, we don't negotiate wages with the Hanford Contractors.

Q. Are there no wages set forth in the Hanford Works [728] Agreement? A. Yes, sir.

Q. Well, how do they come there if they are not negotiated?

A. We negotiate our wages in the Area outside of the government project, and then the contract, when it is once signed, that contract then is sent to the Davis-Bacon Division of the United States Department of Labor. Then all contracting agencies and government agencies are notified that is the rate that will prevail, that is a Davis-Bacon rate, and it is written in the specifications of all government contracts.

Q. It was also included in the Hanford Works Agreement, wasn't it?

A. Oh, yes, and every government contract has the same thing, the same wage, as Hanford was. The Army and the Army Engineers, dam construction, or reclamation, or anything, it has the same wage scale. However, at Hanford, because of the nature of the plant; there are a few fringe items that you wouldn't find off the project. Those are in there because of the nature of the work done at the Hanford Works.

The Court: Take a recess now for ten minutes.

(Short recess.)

(Testimony of Charles J. Knapp.)

Q. (By Mr. DeGarmo): As I understand it, Mr. Knapp, between all of the parties in court we still don't know [729] when the change in the cement finishers' wages took place is that correct, at the present time, or have you been able to dig up the information since you talked to me?

A. Well, I consulted Mr. McCaffree and Mr. Bacon and Mr. Guess, and all of us together have come up with a date I hope you will accept. 1955, our rate was \$2.75; in April of '56, we come up with \$2.90 retroactive to February 1st; and January, '57, it became \$3.00, plus 4 cents cost of living increase.

Does that help you, sir?

Q. Well, I think that is probably satisfactory for our purpose. But, in any event, the increase in 1956 to \$2.90, retroactive to February 1st——

A. Yes, sir.

Q. ——and assuming that that was finally reached some time in April——

A. Yes, sir.

Q. ——it was not pursuant to the Hanford Works Agreement, isn't that correct?

A. I think you are right, sir.

Q. Mr. Knapp, did you have occasion to attend a hearing before the Pasco-Kennewick Trades Council, which Trades Council—I think I properly should call it Building Trades Council—— [730]

A. Yes, sir.

Q. ——at which a charge of some character had been asserted against—I don't know whether it was Morrison-Knudsen Company alone or whether it

(Testimony of Charles J. Knapp.)

was other companies combined with Morrison-Knudsen Company?

Mr. Etter: Could we have the time, counsel?

Mr. DeGarmo: Well, it would be some time, I think, subsequent to March 22nd of 1956. It was during the early portion of the strike after bus transportation had been discontinued and isolation pay.

A. Well, I could best answer that, sir, if I had the minutes of the Building Trades here. I could give you the exact dates, and who attended and what was discussed. I could have them here Monday, if we met, or be here in court again Monday.

Q. Well, that might be advisable for you to do it. Does your present recollection tell you whether you were or were not there?

A. Well, I can't say, sir, whether I was there or not. The minutes, however, gives the names of all persons who attend. We have had so many meetings then, afternoon, evenings, and council meetings, it would be hard for me to say when I was present at any one given meeting.

Q. Well, you didn't have many meetings at which a charge had been heard before the Pasco-Kennewick Trades Council [731] concerning the discontinuance of bus transportation and isolation pay, did you? There was only one that you know of, isn't that true?

A. Well, I think perhaps, sir, we had many meetings. The reason I say that is because there were only three unions out of the entire Building

(Testimony of Charles J. Knapp.)

Trades Council who were at that time at odds with the Hanford Contractors Committee. Many of the other crafts had negotiated their agreements either with the Associated General Contractors or with the Hanford Works Committee. They had completed their agreements. There was only three left and it was—I remember that it was quite difficult to take care of the business of only three unions in a group of 15 or 17 locals. So I would have to have the minutes, sir, to give you a good answer on that.

Q. All right, I wish, even if I complete my examination today—— A. Yes, sir.

Q. ——I want to go into that further on Monday, and I wish you would catch your minutes and see if you can refresh your recollection.

A. I will bring the entire minutes book, providing they can be returned Wednesday, because they have another meeting on Wednesday night. If the Court says leave them here, then, of course, we will leave them. [732]

Q. I just want you to refresh your recollection as to whether you were there at that meeting or not.

The Court: I shouldn't think that it would be necessary to put them into evidence. Use them to refresh your memory or refer to them, and I don't think it would be necessary to put them in.

Mr. DeGarmo: I have no desire to.

The Witness: All right, sir.

The Court: If we do, we will probably arrange for copies to be put in.

The Witness: All right, sir.

(Testimony of Charles J. Knapp.)

Mr. DeGarmo: Oh, yes, I wouldn't want their minutes.

Q. Mr. Knapp, you have testified that you attended certain meetings with the Hanford Contractors Negotiating Committee in the early part of 1956. I wish to ask you if you attended any such a meeting subsequent to the date of March 8, 1956?

A. I can't give you the date, sir. We had several meetings—not many meetings—after January the 1st. We had many informal meetings. I discussed our problem with Mr. McCaffree on several occasions. They were not formal meetings, however.

Q. Well, is your answer that you can't state whether you had any meetings with the Hanford Contractors Negotiating [733] Committee after March 8th, 1956, that you just don't remember? Perhaps I can refresh your recollection.

A. I wish you would.

Q. I will attempt to. A. All right.

Q. Do you recall, Mr. Knapp, that on or about the 8th of March, 1956, you were advised by letter copy from Mr. McCaffree that certain bargaining rights which were referred to as having previously been held by the Hanford Contractors Negotiating Committee had been turned over to the A.G.C. Chapters in Spokane?

A. Yes, I remember that.

Q. And if the date of that letter was March 8, 1956, would that assist you in refreshing your recollection as to whether you had a meeting with the Hanford Contractors Negotiating Committee subse-

(Testimony of Charles J. Knapp.)

quent to that date? A. I think we did.

Q. Will you state when that meeting was?

A. It was either the day before or on the morning of the same day.

Q. Well, as a matter of fact, on the date of March 8th, isn't it a fact that you attended a meeting at which you were told that the rights were being assigned?

A. I think that was a morning meeting and in the afternoon [734] the letter was sent out. I believe that's right, sir.

Q. You did attend a meeting on the 16th of March, 1956, did you not, Mr. Knapp, dealing with the Hanford situation?

A. Was that meeting held here in Spokane that you are referring to?

Q. Yes, sir. A. Yes.

Q. One of the meetings held in Spokane?

A. Yes, I attended a meeting here.

Q. And there were present at that meeting there, were there not, Mr. Peterson and Mr. Zeman on behalf of the Federal Mediation and Conciliation Service? A. Yes, he was here.

Q. And Mr. Guess and Mr. Sather and Mr. Carbon, Mr. Sebeck, Mr. Halverson, and Mr. Helvey were there on behalf of the negotiating committees of the two A.G.C. chapters? A. Yes, sir.

Q. And you were there representing the cement finishers? A. Yes, sir.

Q. At that meeting, did you make any statement to anybody present that Morrison-Knudsen Com-

(Testimony of Charles J. Knapp.)

pany had promised you that they would continue the furnishing of bus transportation and the payment of isolation pay?

A. I don't remember that I did. [735]

Q. As a matter of fact, Mr. Knapp, do you recall any meeting which you attended subsequent to the 5th day of January, 1956, in which the Hanford situation was under discussion at which you made the claim to anybody that Morrison-Knudsen Company, through Mr. Knack, had promised that they would continue bus transportation and isolation pay? A. I don't think I did.

Q. Do you recall, Mr. Knapp, at the meeting in Spokane on March 16, 1956, which I have referred to and I read you the names, at least, of some of the people who were present—— A. Yes, sir.

Q. ——there were others—that Mr. Sather made this statement:

“That the Associated General Contractors is able to negotiate only for A.G.C. members. We have two members at Hanford, so we are able to negotiate for them.”

Do you remember him making that statement?

A. I think he may have made that statement because of the question that I put to him.

Q. Let me read you the further part of what he said. He said:

“As far as getting this settled goes, we [736] made an offer under hardship conditions and, in view of the fact that it was rejected, we withdraw the offer. We believe, to get some place in settle-

(Testimony of Charles J. Knapp.)

ment, we believe this should be taken under Article 9 of the Teamsters agreement and Article 10 of the Operating Engineers agreement,"

which would be the arbitration or the grievance procedure provisions.

A. I heard that discussed. I am not certain, it may have been Mr. Sather who said that. He didn't say it to me, because——

Q. Well, was there any doubt in your mind at that time, at any time after the meeting of March 16th, Mr. Knapp, that as far as the two contractors represented by the Associated General Contractors of America, they were applying the A.G.C. agreement to the Hanford Works?

A. Not in my case, sir, they weren't, because I was not a member, or I mean to say I wasn't under an agreement to the Heavy Highway Chapter of the A.G.C. The fact of the matter is——

Q. Now, this was a joint meeting, Mr. Knapp? Mr. Helvey was there at this meeting, wasn't he?

A. Yes.

Q. And he is the executive secretary of the Builders [737] Chapter, is he not?

A. Yes, that is true. I don't remember that Mr. Helvey made any such statement as that.

Q. You do remember that Mr. Helvey made this statement, do you not? Mr. Hollingsworth, who was a representative of the same organization you represent, is he not——

A. No.

Q. No, I beg your pardon, of the Operating Engineers?

A. Yes, that is true.

(Testimony of Charles J. Knapp.)

Q. Mr. Hollingsworth asked this question:

“Where would that leave the Building Chapter?”

To which Mr. Helvey made this reply:

“Let me answer. We have two members, Jones and Hopkins. We have practically the same grievance procedure in our agreements as the Heavy Chapter. We would be happy to handle this for our members under that procedure.”

Do you remember Mr. Helvey making that statement?

A. I don't remember that he did, no sir. If it is in the minutes of the Chapter, then I am sure he did.

Q. Do you remember that later in the same meeting, Mr. Knapp, Mr. Hollingsworth, on behalf of the Operating Engineers, in response to some question put by Mr. [738] Peterson of the Mediation Service, said:

“I take it the A.G.C. feels we have an agreement. We could take it under that. To be fair, what will we do as of Wednesday morning?”

He was speaking of bus transportation.

A. He may have said it, sir, but I can't recall. There was a great deal of conversation made, and, to pinpoint what anyone said would be difficult without keeping notes, which I didn't do.

Q. Well, now, you were vitally interested in the matter of bus transportation, were you not——

A. Yes, sir.

Q. ——for your members?

A. Yes, sir.

(Testimony of Charles J. Knapp.)

Q. As a matter of fact, you had insisted that your members were more concerned with the matter of bus transportation than either the Operating Engineers or the Teamsters, isn't that true?

A. Oh, I didn't say any such thing as that, sir; I think we were all equally interested in bus transportation.

Q. Well, Mr. Knapp, didn't you bring out at one of these meetings that, because your members were cement finishers and sometimes their work was such that it required them to work after hours, that it was more [739] important that they have transportation than perhaps for some others?

A. I was speaking for the cement finishers and brought up the proposition that most crafts could leave the job at a given time, that is, at quitting time, and in many cases our cement finishers were somewhat scattered on the job and were required to work beyond the quitting time in order to complete their work. Yes, sir, I discussed that at some length with them.

Q. All right. It was a matter of considerable interest to you, then?

A. Yes, certainly.

Q. Do you remember that at the meeting of March 16th, the one to which I have just referred, it was agreed that the bus transportation would be continued one more day? It had originally stated as the 19th and it was to be continued on Wednesday?

A. I think there were two continuations. Just

(Testimony of Charles J. Knapp.)

as to the dates, I can't give you those, sir. I think there were two.

Q. Let me see if I can refresh your recollection.

A. All right.

Q. Wasn't the first one from the 12th to the 19th? A. I think so.

Q. And then there was an addition of Wednesday, which would [740] have been, I think, the 20th, one day more? A. I think that's right.

Q. Now, did you understand at that time that when they were talking about one day extension, that they were still talking about working under the terms of the Hanford Works Agreement?

A. Well, I couldn't—so far as the union I represented, sir, I couldn't work under the terms of the A.G.C. Agreement. So far as I was concerned, we were still working under the terms and conditions of the Hanford Agreement, yes, sir.

Q. But you had no agreement of any kind with Morrison-Knudsen Company?

A. No, sir, other than that they were included with all contractors on the project under the Hanford Works Agreement up to December 31st or January 1st.

Q. You mentioneed in your testimony, Mr. Knapp, that at an early meeting, I think around 1952, a Mr. Ray Fortune was present at the meeting. This was a meeting preliminary to the Hanford Contractors Negotiating Committee?

A. Yes, sir, I'm quite sure I'm right on that.

Q. You are quite sure of that?

(Testimony of Charles J. Knapp.)

A. Quite sure, yes, sir. At least that meeting or the next meeting that was held in the Desert Inn, but I'm [741] quite certain it was at the meeting that was held at the building adjoining the Administration Building at the village of Richland, because I talked several times with Ray Fortune at the time. I'm quite sure it was the first meeting.

Q. It couldn't have been that Mr. Knack and another gentleman by the name of Mr. Thomas of Morrison-Knudsen Company attended that meeting, and not Mr. Fortune at all?

A. I don't remember a Mr. Thomas, sir. I don't remember Mr. Knack. I knew Ray Fortune for several years, I was quite familiar with Ray.

Q. Well, did you talk with him directly at this meeting?

A. Either at the first meeting or the meeting held just a little while after that at the Desert Inn, yes, sir, at one or the other of those. I was quite certain in my thinking that it was the first meeting that was called by the Atomic Energy Commission.

Q. Well, now, I didn't get from your initial testimony that there were two meetings, I only heard of one. Were there two meetings that you talked about?

A. Yes, sir.

Q. As I recall, you mentioned a statement made by Mr. Shaw. At which of these two meetings was that statement made?

A. At the first meeting. [742]

Q. Was it at the first meeting that Mr. Fortune attended?

(Testimony of Charles J. Knapp.)

A. I thought it was, but I could be mistaken, it might have been the second meeting.

Q. Are you sure that Mr. Fortune attended any meeting? A. I'm quite sure of it.

Q. But you don't know whether he was present when Mr. Shaw's statement was made or not?

A. I think all the time that he was at the first meeting. I'm quite sure, I could be wrong. If it wasn't at the first meeting, then I know he was there at the second one.

Q. Mr. Knapp, during the course of years, you have had rather numerous conferences with the Hanford Contractors Negotiating Committee?

A. A great many, yes, sir.

Q. During those conferences, were you led to believe that the individual members of the Hanford Contractors Negotiating Committee were representing specifically their employer? I am speaking now, let's suppose that one was employed by ones and another one by Kaiser Engineers and another one by some other contractor, were they representing, as members of the Hanford Contractors Negotiating Committee, the party that they were employed by only?

A. No, sir, they represented their employer and others who [743] were at the time on the job or those employers who may later come on the job.

Q. Mr. Knapp, isn't it a fact that it was explained to you and isn't it, as a matter of fact, set forth in the agreement that when the Hanford Contractors Negotiating Committee sign, they sign only

(Testimony of Charles J. Knapp.)

as members of the committee and not as representatives of any employer of theirs?

A. That is not true, sir, because there was hundreds of contractors on the Hanford Project and they all worked under the terms and conditions of this agreement and they never signed it.

Q. I asked you if the members of the committee, when they sign or when they negotiated, they negotiated not on behalf of the particular employer that they represented——

A. Yes, sir.

Q. ——but as merely a committee which recommended to employers certain working conditions?

A. When they signed—when they signed the contract as the committee, there was no recommendation, that was it. Not a recommendation, it was a signed contract. They represented the other employers on the project or those who would be employers on the project.

Q. I just want to be sure, perhaps I haven't made myself clear—— [744]

A. Yes, sir.

Q. ——that were you not told on many occasions that if a man happened to be employed by J. A. Jones——

A. Yes, sir.

Q. ——and he was also a member of the Negotiating committee——

A. Yes, sir.

Q. ——that he was not appearing on that committee as a representative of J. A. Jones, but as a member of the Negotiating Committee on behalf of whatever contractors might be represented by that committee?

A. That's right, that is true.

(Testimony of Charles J. Knapp.)

Q. Or might ultimately agree to the contract?

A. I understand you now and that's right.

Q. Yes.

A. I might add, sir, that there were men on the committee, the Contractors Negotiating Committee, who were not even employed on the Hanford Works.

Q. That's right, who didn't even have a contract?

A. That's right.

Q. Yes. So they couldn't have been acting particularly on behalf of their individual employer?

A. That's right.

Q. During the period preceding December 31st of 1955, Mr. Knapp, had there been members of the Pasco-Kennewick [745] Building Trades Council who had refused to continue under the Hanford Works Agreement and who had negotiated separate area agreements?

A. That is true, yes, sir.

Q. Will you tell us who they were?

A. I can tell you one in particular. The Carpenters International Union had formed a District Council and they gave as their reason for separating themselves from the Hanford Agreement that they were members of the Carpenters Conference or Carpenters Council. Therefore, the Conference or Council would negotiate, attempt to negotiate, a uniform agreement within their jurisdiction, and they had withdrawn from the Hanford Works Agreement, believing that their conference could get a better agreement for them than they could get for themselves out of Hanford.

(Testimony of Charles J. Knapp.)

Q. How about the Boilermakers?

A. The Boilermakers set up their seven western states agreement. Therefore, they withdrew from the Hanford Works Agreement.

Q. How about the Sheet Metal Workers?

A. Sheet Metal Workers also set up an association—I mean to say that employers set up an association—and the Sheet Metal Workers negotiated with them, and that agreement, when it was reached, was attached to the Hanford [746] Works Agreement. That's right.

Q. Now, in all of these instances, these separate agreements which were negotiated were applicable to areas greater in geographical character than just the Hanford Works, isn't that true?

A. That's right, yes, sir.

Q. In other words, they were area agreements similar to the A.G.C. agreements here?

A. Yes, sir.

Mr. DeGarmo: I have no further questions of this witness at this time, except to reserve one that I want him to check.

The Court: Yes, all right.

Redirect Examination

By Mr. Etter:

Q. Mr. Knapp, your Local, is it number 478?

A. Yes, sir.

Mr. Etter: Will you mark this?

The Clerk: It will be the Defendants' 10.

Q. (By Mr. Etter): Handing you the Defend-

(Testimony of Charles J. Knapp.)

ants' 10 for identification, this is a copy of a letter. Without answering, would you read that, Mr. Knapp? A. Yes, sir.

Q. Are you familiar with that? [747]

A. Yes.

Q. Is that an exact type of copy received by you to which is appended your local?

A. Yes.

Q. It is.

Mr. Etter: You were inquiring about this.

Mr. DeGarmo: I thought there was already one in evidence.

Mr. Etter: I don't believe there is. I will move that this be admitted in evidence.

Mr. DeGarmo: Well, I will have to state an objection to it, if your Honor please, that I assume that it is offered for some purpose. I don't know what the purpose is at the moment and I am objecting to it upon the grounds that it is incompetent, irrelevant and immaterial. It is not signed by any person representing or shown to have been representing the plaintiff in the case and, therefore, is not in any manner binding upon it. I don't know just what purpose counsel has offered it.

Mr. Etter: Well, Mr. DeGarmo inquired about this very letter when he inquired of Mr. Knapp if he didn't receive a letter from the Hanford Contractors Committee on a particular date, the 9th, saying certain things and he asked certain things of Mr. Knapp. Now I [748] have the letter.

Mr. DeGarmo: I was trying to fix a date, was

(Testimony of Charles J. Knapp.)

all. The witness was indefinite in his mind as to a date and I was trying to refresh his recollection.

Mr. Etter: I think the record will show you mentioned something in connection with the letter.

Mr. DeGarmo: That's right, I did. I was trying to refresh his recollection as to when certain things occurred.

Mr. Etter: I think the whole letter should go in if you refer to it and start inquiring on examination.

Mr. DeGarmo: Well, I have stated my objection.

Mr. Etter: All right.

Mr. DeGarmo: The Court can rule on it.

The Court: Well, I think in view of the cross-examination, it will be admitted. However, the Court is not taking the position that it is binding on the plaintiff unless it is shown to be by the evidence.

(Whereupon, the said document was admitted in evidence as Defendants' Exhibit No. 10.)

Q. (By Mr. Etter): Up until the time of the receipt of this letter, as I understand it, all negotiations were carried on with the Hanford Committee? A. That's right. [749]

Q. And thereafter, as counsel inquired, you met with the A.G.C., that is, both Chapters?

A. Yes, sir.

Q. Is that correct?

A. That's right.

(Testimony of Charles J. Knapp.)

Q. And discussed with them these matters that have been inquired of, is that correct?

A. Yes.

Q. As I understand your testimony, is it the fact that the Hanford Works Agreement from year to year incorporates the area wage scale?

A. Yes, sir.

Q. And that the area wage scale is secured from the wage agreements negotiated by the A.G.C. which are sent to Washington under Davis-Bacon and then that is called the predetermined wage?

A. Yes, sir.

Q. And is placed in effect on government work within the area?

A. That's right, sir.

Q. Including Hanford, the Engineers, dams, and what not?

A. Yes, sir.

Q. So that the increases that you have testified to about here are automatically year from year incorporated in the agreement? [750]

A. Yes, sir.

Q. Is that correct?

A. That is correct.

Q. And the Hanford Agreement, I think, as you said, has the additional fringe benefits to which you referred, particularly the bus transportation and the isolation pay?

A. Bus transportation is not or never had been.

Q. Oh, pardon me.

A. Uh-huh.

Q. Isolation pay in the contract?

A. Yes, sir.

Q. And the traditional provision, at least for 10 years that you know, of bus transportation?

(Testimony of Charles J. Knapp.)

A. Yes.

Mr. DeGarmo: I don't understand what you mean, counsel, by "traditional provision."

Mr. Etter: Well, you have had it.

Mr. DeGarmo: You mean providing? I just want——

Mr. Etter: You have had it.

The Court: I assume they mean they have had it, although it wasn't in the contract.

Mr. DeGarmo: I assume it means providing by provision. Perhaps I am the one that is wrong.

The Court: Well, that is what I understood it [751] to mean, that they have had it, although it has not been in the contract.

The Witness: That's right, since '43.

Mr. DeGarmo: That's right, kind of a grandfather rights proposition.

Q. (By Mr. Etter): Now, when you were at this meeting on the 16th, you indicated that you in the discussion proposed the question to Mr. Sather that you weren't able to answer or finish telling about it. Do you recall what it was you said to Mr. Sather?

A. Well, Mr. Sather was pretty careful not to discuss too much with me because I was not—I was not under his agreement, I was pretty much ignored by the Heavy Chapter. I had to direct more of my questions to Mr. Helvey. The question I put to them, and Mr. Sather partly answered it and Mr. Helvey completed it, was that under the A.G.C. agreement, what agreement would we have then

(Testimony of Charles J. Knapp.)

with the possible 75 or 80 other contractors who were not members of the A.G.C., and they said that they would only speak for those who were members of the A.G.C., which left us completely without an agreement of all these other contractors who might come on the project, and we were told by both Mr. Helvey and Mr. Sather that it would be our job to deal with those people as they come on the job, which is an impossibility. Because of security [752] regulations, we are not permitted on the project to sign agreements or negotiate or anything else. So we were—the only people that they could or would deal for were at that time two contractors, and they admitted that it was also possible there might be 75 or 80 contractors on the job and no A.G.C. members employed there, which would leave us in a bad way, and we pointed out to them that the Hanford contract covered all contractors. Therefore, the A.G.C. contract wouldn't be a particular benefit to us for that one reason and others. They were very definite in saying they would not have anything to do with a contractor who was not a member of the A.G.C.

Mr. Etter: That is all.

Mr. DeGarmo: I have no further questions.

The Court: That is all, then, Mr. Knapp.

(Witness excused.)

Mr. Etter: Mr. Dunn, please.

WILLIAM H. DUNN

called and sworn as a witness on behalf of the defendants, was examined and testified as follows:

Direct Examination

By Mr. Etter:

Q. Will you state your name, please? [753]

A. William Hubert Dunn.

Q. Where do you live, Mr. Dunn?

A. In Kennewick, Washington.

Q. And how long have you lived at Kennewick?

A. 1947, sir.

Q. You live there with your family?

A. Yes, sir.

Q. And what is your occupation?

A. Field representative at the present time for the Operating Engineers, Local 370.

Q. And by Field Representative, you mean an assistant, in a way, to the business representative, Mr. Rossman? A. That is true.

Q. That is true. And how long have you been a field representative for the Operating Engineers, Local No. 340? A. 370.

Q. 370. A. October, 1952.

Q. October, 1952? A. Right.

Q. And prior to that time, did you work at the trade? A. I worked as heavy duty mechanic.

Q. As heavy duty mechanic? A. Yes, sir.

Q. And now do you recall, do you, a contract that was [754] secured by Morrison-Knudsen for certain work to be performed within the Hanford

(Testimony of William H. Dunn.)

Works Project? A. I do.

Q. And do you recall whether or not any work was performed that affected any of the members of the Operating Engineers, Local 370, in the year 1955, November or December of that year, it being testified that the contract was secured on the 24th?

A. Yes, sir.

Q. Beg your pardon? A. Yes, sir, we did.

Q. You did. Do you remember and can you tell me what work was performed by Morrison-Knudsen on its contract in 1955?

A. I have some notes, may I refer to them?

The Court: Yes, to refresh your memory.

A. On December the 9th, 1955, one operator moved equipment into the 100-F area.

Q. (By Mr. Etter): Into the 100-F area?

A. Yes, sir.

Q. That is within the Hanford Works Project, without going any further?

A. Right, yes, sir.

Q. And was there certain work then carried on in that area?

A. The actual excavation for the building site started [755] December the 12th.

Q. I see. It started December the 12th?

A. Yes, sir.

Q. And do you know when that was completed?

A. Not for sure, the completion of that one job there. On January the 5th, 1956, they started excavation in the 100-H area.

Q. And that is also in the Hanford Project?

(Testimony of William H. Dunn.)

A. That is within the Hanford Project.

Q. All right——

A. And that job was finished on January the 27th, 1956.

Q. I see. Now, on the first job to which you referred in that area, the first work, you said that there were employees, or rather there were union members of Local No. 370 engaged in that work on December the 12th? A. Right.

Q. There was one that moved machinery in or helped move it in on the 9th, is that correct?

A. That is correct.

Q. And do you know how many men you had employed there out of the members of your local union on that job that was started December the 12th?

A. Possibly 6 or 8 people, members of the Operating Engineers.

Q. Members of the Operating Engineers? [756]

A. Yes, sir.

Q. Were you on the Project during the course of the work?

A. I was escorted on the job by Mr. Ray Reed at a later job.

Q. I see. And you saw these men on the job?

A. I did, sir.

Q. They were working on the job?

A. Yes, sir.

Q. What type of work was it?

A. They were running, operating a drag line and cats.

(Testimony of William H. Dunn.)

Q. Drag line with cats? A. Yes, sir.

Q. That is within the jurisdiction of the Engineers? A. That is correct.

Q. All right. Now, do you know whether or not there were any Teamsters working there?

A. Yes, there were.

Q. Beg your pardon? A. They were.

Q. There were. At the same time your men were there?

A. Well, somebody was driving the Euc, so I assume they were Teamsters.

Q. Well, you saw someone driving them, you just assumed that? A. Yes, sir. [757]

Q. From the fact that, I assume, these contracts were made with the unions? A. That's right.

Q. Now, this other job of yours, or the other job upon which your men were employed, was that work commenced—I think it was in January?

A. Yes, sir.

Q. Around the 5th? A. Yes, sir.

Q. And about to the 27th? A. Right.

Q. I see. And did you have men working in there on that?

A. Probably a like number on that project, also.

Q. Probably around a like number?

A. Yes, sir.

Q. At different times? A. Yes.

Q. All right. Now, when your men were working in December of 1955, that was a Morrison-Knudsen contract, was it not?

(Testimony of William H. Dunn.)

A. It was on the Morrison-Knudsen job.

Q. Were your men provided bus transportation and isolation pay in 1955? A. Yes, sir.

Q. And was that bus transportation and isolation pay [758] continued into January of 1956?

A. To the best of my knowledge, it was.

Q. I see. And the wage scale that you were paid, was that in accord with the scales adopted and applied to the Hanford Project each year?

A. It was, sir.

Q. It was? A. Yes, sir.

Q. Now, were you, Mr. Dunn, present at a meeting, a so-called prejob conference meeting, in the Labor Hall at Pasco, Washington, in the afternoon of the 5th day of January, 1956?

A. I was.

Q. And did you occupy some official capacity at that meeting?

A. At that time, I was president of the Pasco-Kennewick Building Trades Council.

Q. You were representing them?

A. Well, I was representing Operating Engineers, but I was there, and I was their president.

Q. You were president of that Council?

A. That's right.

Q. That's right. Had the Operating Engineers, do you know whether they had assigned or authorized certain bargaining by that Council at that time? [759]

A. At that particular time, I could not answer, I do not know.

(Testimony of William H. Dunn.)

Q. I see. Now, did you have some position at the meeting itself?

A. I chairmanned the meeting?

Q. You chairmanned the meeting?

A. Yes, sir.

Q. And it was held in a hall, was it?

A. In the conference room at the new Labor Temple.

Q. In the conference room? A. Yes, sir.

Q. In other words, were you around a big table, is that it? A. That is correct.

Q. That is correct. And who were seated around there? I mean, in number, how many would you say were representing the various unions?

A. Twelve to fifteen fellows, I would say.

Q. Beg pardon?

A. About twelve to fifteen unions.

Q. About twelve to fifteen unions. And were there some gentlemen there who were representing, or least were there, on behalf of Morrison-Knudsen? A. There was.

Q. And tell us the names, if you will?

A. Mr. Lee Knack and Mr. Ray Reed. [760]

Q. And had you known Mr. Knack before that time?

A. That was the first time I ever met him, that day. I met him in Richland at the morning meeting.

Q. You met him at the morning meeting in Richland? A. Yes, sir.

Q. Had you known Mr. Reed before?

(Testimony of William H. Dunn.)

A. I had got acquainted with him before, yes, sir. I went out and visited him at his office.

Q. That was in 1955?

A. Richland, right, yes.

Q. In connection, I assume, with Mr. Reed's job and business and yours? A. Yes, sir.

Q. And you chairmanned the meeting, I understand? A. That's right.

Q. And would you say, to move this along, that it lasted from about 2:30 to 5:30?

A. Approximately, yes.

Q. And particularly will you tell us what you remember, the subjects that you remember that were discussed, and, if you can, by the people who might have been interested and what they might have said or what they said, in substance and effect, as exactly as you can remember it?

A. Well, being chairman of the meeting, I was quite interested in trying to keep the meeting moving, and I [761] know in particular jurisdiction was talked and Mr. Reed—Mr. Knack informed us that any time we had any trouble, any craft, to go to Mr. Reed first before they even bothered him with it, which was a company policy, and he said, "If you haven't went to Mr. Reed, don't come to me with it."

We also talked about various job assignments. He said blue prints would be available, we could go out and study these prints, and we could get together and before this job even came up, we would be able to establish who was going to do the work.

(Testimony of William H. Dunn.)

Also, it was discussed about getting on the job, about the pass situation. It has always been a sore spot on the Hanford to try to get a pass to get on the job, and Mr. Knack informed us that any time we wanted to get on the job, that he would see to it or Mr. Reed would see to it that we got on the job. And usual procedure in prejob conference was discussed by various crafts, particularly the Electricians, and I don't think a Plumber was present, but an Electrician was there and wanted to know who the subcontractor would be for the electrical work, and most problems that would come up in a regular prejob conference was discussed.

Q. Now, do you recall whether there was any discussion with reference to the matter of the contract additions or [762] otherwise that would apply on the work that was being discussed between you men and between Mr. Knack and Mr. Reed?

A. Well, before the meeting even started, the Operating Engineers and the Teamsters and the Finishers had more or less had a kind of a little conference, and it was agreed among the three of us that Mr. Knapp would ask——

Mr. DeGarmo: Just a minute——

The Court: Just a moment. Do you have an objection?

Mr. DeGarmo: Yes, I am objecting to having reached some agreement before the meeting, as not being binding on us, pure hearsay.

The Court: Yes, I assume there were no representatives——

A. No, sir.

The Court: ——of Morrison-Knudsen?

(Testimony of William H. Dunn.)

A. There wasn't.

The Court: Well, I will sustain the objection to that.

Q. (By Mr. Etter): All right, tell us what happened.

A. Mr. Knapp was going to ask Mr. Knack what was going to be the situation pertaining to isolation pay and bus transportation.

Q. Well, all right, will you tell us what occurred, as you [763] recall it, what was said about that?

A. Well, the meeting progressed along, it was just about ready to break up, in fact, some of the fellows had started getting up from the table, and Mr. Knapp said to Mr. Lee Knack, "I got a question I want to ask you," and he asked him what was going to be their position pertaining to isolation pay and free bus transportation, and Mr. Knack's reply to him was, "We bid this under the Hanford Works Agreement and we are going to do the job under that." In those words, that is what the man meant.

Q. And was there any further discussion that you can remember on that score?

A. Well, yes, Mr. Knack said that, "You guys got a problem out there, you settle out there, and we will go along with it."

Q. Anything else that you can remember particularly?

A. Not on that particular subject, no. [764]

(Testimony of William H. Dunn.)

Cross-Examination

By Mr. DeGarmo:

Q. Well, you were here when Mr. Reed testified that he did sit in as an observer at such meetings, were you not?

A. Yes. But when, I don't know.

Q. After the January 5th meeting of 1956 at the Pasco Labor Temple?

A. Yes, I believe that's right.

Q. Yes. Now, these men whom you state were employed members of the Operating Engineers in December of 1956, were they working directly for Morrison-Knudsen Company, or were they working for a subcontractor of [771] Morrison-Knudsen Company?

A. What was the year on that?

Q. In December, 1955, I should say.

A. Yes.

Q. Were they working for Morrison-Knudsen Company or were they working for a subcontractor?

A. For a subcontractor?

Q. Yes. A. Yes, sir.

Q. And was that also true of the Operating Engineers that you mentioned were on the job starting January 5th until January 27th?

A. That is true, yes.

Q. So they were carried on a subcontractor's pay roll and not the Morrison-Knudsen Company's pay roll, as far as you know?

A. That is correct.

(Testimony of William H. Dunn.)

Q. You are also agreeable to the statement, are you not, Mr. Dunn, that the furnishing of bus transportation, as far as the Operating Engineers were concerned, has never been a contractual obligation since 1952? A. It has not.

Q. And, yet, that was one of the provisions that the Operating Engineers were insisting upon being continued even though not contractual? [772]

A. That is true.

Q. And the discontinuance of that was a partial reason for the work stoppage which occurred on March 22nd or 23rd of 1956? A. That is true.

Q. Mr. Dunn, you say you were the chairman of the pre-job conference which was held at the Pasco-Kennewick Building Trades Council building?

A. That is true, that is right.

Q. And was this particular question which Mr. Knapp asked and which you state Mr. Knack answered one which was made in the presence of all of the persons surrounding this round-table conference that you mentioned?

A. I would say they were still all present, yes.

Q. Every one was still there?

A. Well, there might have been one or two left after the meeting started, I don't know that they were all there, but there was quite a number of them still there when the question was asked.

Q. Can you tell us who were there at the time?

A. May I check my notes?

The Court: Yes.

A. At the outset?

(Testimony of William H. Dunn.)

Q. (By Mr. DeGarmo): I mean at the time this statement was supposed to have been [773] made?

A. No, I can't tell you the exact names.

Q. Well, all you can tell me is the people who were there at the meeting showing on your register as having been at the meeting?

A. That is true.

Q. Now, all of the people did not stay through the entire meeting, did they?

A. I don't think so.

Q. And this was, as I think you said, at the tail end or the windup of the meeting that this occurred? A. That is true.

Q. And is it a correct statement that you are unable at this time to tell me who the people would be who were present, still remaining, at the conference when this statement is claimed to have been made?

A. Well, Charlie Knapp was there, myself, Larry King of the Millwrights, Ed Clary of the Painters, Ray Sutherland of the Laborers, Redmond of the Electricians, and I think Mr. Hill was there earlier but he left. Now, I don't think he was there when the statement was made. There was others, but I don't recall who all they were.

Q. Were any crafts interested in the matter of bus transportation and isolation pay other than the Operating Engineers, Teamsters, and Cement Finishers? A. I don't believe so. [774]

Q. Just the three? A. That's right.

(Testimony of William H. Dunn.)

Q. Now I would like for you to repeat again for me, and do it as exactly as you can remember, the words which Mr. Knack used, and I want all that he said in response to Mr. Knapp's statement or question.

A. Well, Mr. Knapp asked, Mr. Charles Knapp asked Mr. Lee Knack, "What would be your position on the isolation pay and free bus transportation?" and I believe his reply to that question was that, "We bid this job under the Hanford Works Agreement and we are going to do the job under those conditions." That is about the substance of what the man said. Might be some other words added, but I don't recall any of them that were added.

Q. Well, do you remember—I am trying to give you an opportunity now to tell us anything that you can recall that Mr. Knack said in addition to the statement that you have mentioned in response to the question which Mr. Knapp asked him.

A. I don't think I can add too much to it.

Q. You don't think you can add anything to that?

A. No.

Q. Do you recall, Mr. Dunn, that Mr. Knack mentioned that they were not willing to enter into any arrangement for the duration of any job unless the unions were willing to [775] do likewise?

A. He could have made that statement, I don't recall it.

Q. Well, now, you know that there was no guarantee of wage rates during the job, do you not,

(Testimony of William H. Dunn.)

even though Morrison-Knudsen made a bid on the basis of wage rates as they existed at the time they placed their bid? A. I don't get the question.

Q. Well, the Hanford Works Agreement had other things in it than isolation pay, did it not?

A. That is true.

Q. It had reference to wages? A. Right.

Q. And it had reference to working conditions?

A. That is true.

Q. And you knew, did you not, that the Hanford Works Agreement was subject to termination?

A. That is true.

Q. And it was subject to modification?

A. That is right.

Q. At the instance of either the contractors or of the unions? A. That is true.

Q. And the only statement that Mr. Knack made was that they bid the job under the Hanford Works Agreement and they were going to do what, finish up under it, or something [776] of that kind?

A. Well, I believe his statement was he was going to do it under it, or something to that effect.

Q. Was going to do it under it?

A. That's right, I don't recall the exact words.

Q. Was there any discussion in that meeting of the fact that the Hanford Works Agreement had already been terminated, Mr. Dunn?

A. I don't recall it.

Q. Well, you had attended a morning meeting at which there had been considerable discussion, had you not? A. That is true.

(Testimony of William H. Dunn.)

Q. And Mr. Knapp was there? A. Yes.

Q. And other of the people who were present at the afternoon meeting?

A. Yes, I believe that is true.

Q. So that it wasn't necessary to state at the afternoon meeting that the Hanford Agreement had been terminated? A. No.

Q. It was known? A. I assume, yes.

Q. Yes, and it had been a subject of considerable discussion at the morning meeting in Richland? A. That is true. [777]

The Court: I assume it will take some little time to finish with this witness so we may as well quit now.

The Court will adjourn until Monday morning at 10 o'clock.

(Whereupon, the trial in the instant cause was adjourned until 10 o'clock a.m., Monday, June 17, 1957.)

Monday, June 17, 1957

(Whereupon, the trial in the instant cause was resumed pursuant to adjournment, all parties being present as before, and the following proceedings were had, to wit:)

The Court: All right, proceed.

WILLIAM H. DUNN

having previously been sworn, resumed the stand and testified further as follows:

Cross-Examination

(Continued)

By Mr. DeGarmo:

Q. Mr. Dunn, I wish for a moment to go back to a matter which was referred to in your testimony on last Thursday and I wish to know if it is now your testimony that Ray Reed was or was not present in a meeting or meetings between the unions and the Hanford Contractors Negotiating Committee in 1955? A. He was not.

Q. All right. Now, in your testimony of last week, Mr. Dunn, reference was made to the matter of predetermined wages. I would like to ask you under what law are predetermined wages fixed, if you know? [780]

A. To my knowledge, Bacon-Davis.

Q. I think—is it not true that it is just the reverse, the Davis-Bacon Act?

A. Oh, yes, Davis-Bacon, yes. Excuse me.

Q. Can you explain for us, Mr. Dunn, just how the wages are predetermined under the Davis-Bacon Act?

A. The wages that are being paid in the surrounding territory.

Q. Well, at what period of time is the determination made as to what are the prevailing wages in the area? A. That I do not know.

Q. Well, is it at the inception of a contract or is

(Testimony of William H. Dunn.)

it midway of a contract or it is from time to time, or do you know? A. I do not know.

Q. Well, now, you testified, Mr. Dunn, that the wages which were being paid in 1956 on the Hanford Project to the members of your union, local 370, were the predetermined wages, did you not?

A. That is true, yes.

Q. Well, now, is that true? A. Yes.

Q. And you are positive of that? A. Yes.

Q. Throughout the entire year of 1956? [781]

A. On the Hanford Project?

Q. Yes, sir.

A. Well, to my knowledge, it is.

Q. I want to call your attention, Mr. Dunn, to Section 20 of the standard form of Government contract 23a which appears as a part of Exhibit 1, and in a portion thereof which is entitled "Davis-Bacon Act, 40 U.S.C., 276-A(7):

"A. All mechanics and laborers employed or working directly upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Copeland Act [Anti-Kickback] Regulations [29 CFR, Part 3]) the full amounts due at time of payment, computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and

(Testimony of William H. Dunn.)

such laborers and mechanics; and a copy of the wage determination decision shall be kept posted by the contractor at the [782] site of the work in a prominent place where it can be easily seen by the workers.”

Now, that indicates, does it not, Mr. Dunn, that there was a predetermination of Davis-Bacon rates with respect to this particular contract, that is, the contract between Morrison-Knudsen Company and the Atomic Energy Commission, prior to the entering into of this contract? A. I would say yes.

Q. All right, now, it refers to a part, too. It says that those wages are not less than those contained in the wage determination decision which is attached hereto and made a part hereof.

The Court: That is Plaintiff's contract with the A.E.C., isn't it?

Mr. DeGarmo: Yes, your Honor, Plaintiff's Exhibit 1.

Q. I am calling your attention, Mr. Dunn, to that portion of this agreement which is Part IV, dated September 28, 1955, "Wage Rates and Allowances," and I ask you to refer to that and tell the Court if those are the wages which were paid to your members of your union throughout the year 1956. You will find that portion of it that refers to Operating Engineers.

The Court: This is still Exhibit 1?

Mr. DeGarmo: This is still Exhibit 1, if [783] your Honor please, yes, sir.

A. I think this is still the '55 rate.

(Testimony of William H. Dunn.)

Q. Well, now, those are the predetermined wages, are they not, Mr. Dunn, that are set forth?

A. In this agreement, yes.

Q. And that is the '55 rate, is it not?

A. Right, that is true.

Q. And that is not the rate which was paid to the Operating Engineers in 1956, is it?

A. No.

Q. Then, when you testified that they were paid according to the predetermined wage rate, that was not a fact, was it, in 1956?

A. It was at a later date. The rate was put in at our request through the Davis-Bacon Act and were paid that, our '56 rate, in '56.

Q. Well, now, there is no authority, is there, Mr. Dunn, for more than one predetermination of wages under the Davis-Bacon Act under a single contract?

A. Only one, that is right.

Q. Yes, and that is before the beginning of the job or at the beginning of the job?

A. At the beginning, yes.

Q. And you don't change the predetermined rate from time to time throughout the contract, do [784] you?

A. It is a matter of the contract.

Q. Mr. Dunn, under what contract were the Operating Engineers working at Hanford in 1955?

A. The Hanford Works Agreement.

Q. In 1955? A. Yes, sir.

Q. And that is the agreement which is in evidence here as Plaintiff's Exhibit 6?

A. Yes, that's right.

(Testimony of William H. Dunn.)

Q. Now, I am not stating, Mr. Dunn, to you that all of the addendums to that covering the various crafts were necessarily those which were in effect in 1955.

A. Right.

Q. But it was——

A. Basically.

Q. ——basically under the Hanford Works Agreement?

A. Right.

Q. That you say they were working in 1955?

A. Right.

Q. Under what agreement, Mr. Dunn, were the Operating Engineers working from January 1, 1956 until March 22nd, 1956?

A. What agreement?

Q. Yes, sir.

A. As far as the Operating Engineers, we were with an [785] understanding we were still performing the work under the old Hanford Works Agreement.

Q. Well, now, there was no Hanford Works Agreement after January 1, 1956, was there, Mr. Dunn?

A. Basically, no, but we were still working under the same conditions.

Q. Well, by agreement with whom?

A. Letter from the Hanford Negotiating Committee signed by Mr. McCaffree.

Q. Did you have any agreement with Morrison-Knudsen Company or the Associated General Contractors of America, Spokane Chapter, Heavy Highway and Engineering Branch, that you were working under the Hanford Works Agreement?

(Testimony of William H. Dunn.)

A. No, sir.

Q. Mr. Dunn, what written agreement, if any, was there between Morrison-Knudsen Company, the plaintiff in this action, and the International Union of Operating Engineers, Local 370, providing for the payment of health and welfare benefits and for the terms and provisions of such payments with respect to the members of the union working for Morrison-Knudsen Company on the Hanford Works Project from January 1, 1956 until March 22nd, 1956?

A. You say written agreement?

Q. Yes, sir, a written agreement. [786]

A. To my knowledge, there wasn't one.

Q. Well, do you mean to tell this Court that the Operating Engineers collected health and welfare benefits from Morrison-Knudsen Company on the wages of its employees knowing that there was no such agreement in writing?

A. Well, I don't think the Operating Engineers—maybe the administrator of our health and welfare did, but the Operating Engineers, as such, didn't.

Q. They didn't what?

A. Collect health and welfare.

Q. Well, you know that payments were made to the health and welfare fund for the benefit of the employees working for Morrison-Knudsen Company during that period, don't you?

A. Yes, paid to the administrator, who is hired by the contractors negotiating—contractors' executive members and the unions' representatives.

Q. Your union has representatives on that trust

(Testimony of William H. Dunn.)

into which the funds are paid, does it not, Mr. Dunn?

A. Yes, sir, along with the three contractors.

Q. And it is your testimony that there was no written contract under which those payments were made?

A. To my knowledge, no.

Q. You deny that those payments were made under the A.G.C., [787] Spokane Chapter, agreement, which is in evidence here, between the A.G.C. and the Operating Engineers, as Plaintiff's Exhibit 3?

A. I do not know under what agreement they were paid under.

Q. Well, you say they were not paid under a written agreement; I am asking if you, as one of the business agents for the Operating Engineers, Local No. 370, deny that they were paid under this agreement which I have in front of you as Plaintiff's Exhibit 3?

A. For that particular job?

Q. Yes, sir, for that particular job.

A. I would not know, I don't have the answer.

Q. You just don't know? A. That's right.

Q. Well, you are aware, Mr. Dunn, are you not, that the Operating Engineers, Local No. 370, filed an answer in this case in December of 1956, in which they denied that the agreement which you have in front of you as Plaintiff's Exhibit 3 had any application to Hanford Works or to the work done by Morrison-Knudsen Company there?

A. To my knowledge, when this agreement was negotiated, it wasn't to be applied to Hanford.

(Testimony of William H. Dunn.)

Q. Well, I asked you if you were aware of the fact—— [788]

Mr. Etter: Well, he wouldn't be aware of what I put in my pleading.

Mr. DeGarmo: I don't know whether he would know or not and I want to find out. If he isn't aware of it, he can so answer. A. I don't know.

Q. Have you ever seen the answer of your Union in this case? A. No, sir.

Mr. Etter: I will stipulate with you it is just exactly as you say it is, Mr. DeGarmo, if it is of any value here.

Mr. DeGarmo: I think it will be of considerable value.

Mr. Etter: All right, we will deny it and we denied it for the Engineers, so move along.

Q. (By Mr. DeGarmo): Mr. Dunn, were you present at a hearing here in Spokane before the Ching Panel on June 18, 1956?

A. I was to a hearing of the Ching Panel. I don't remember the date.

Q. Well, it was here in Spokane at the Davenport Hotel, was it not? A. Yes, sir.

Q. And I was in attendance, at least during a portion of [789] the meeting until you insisted I leave, or at least not you but the union members?

A. That is true.

Q. That you wouldn't talk in my presence?

A. I suppose that's right.

Q. Now, is it a fact, Mr. Dunn, that at the hearing either you or Mr. Rossman, in your presence,

(Testimony of William H. Dunn.)

insisted on behalf of the Operating Engineers that the A.G.C. agreement, Exhibit 3, which is before you there, did not cover the work of your members with members of the A.G.C., Spokane Heavy Highway and Engineering Construction Chapter, on the Hanford Project?

A. Yes, we insisted because of the fact when that was negotiated, it was our understanding it was not to apply at Hanford.

Q. Well, you so insisted at that time?

A. Yes.

Q. And is it a fact that you refused, on behalf of the membership of Operating Engineers, Local 370, to return to work under the terms and provisions of the A.G.C. agreement, Exhibit 3?

A. Me, as such, no, sir.

Q. Pardon?

A. As me, as an individual, no, sir.

Q. No, either you or Mr. Rossman, in your presence? [790]

A. Well, Mr. Rossman will have to speak for himself; I did not.

Q. You did not refuse to return to work under the terms of the agreement which is in front of you as Exhibit 3?

A. No, sir.

Q. Well, were you willing at that time to return under the terms of the agreement?

A. If the membership so directed, yes.

Q. Well, did you ever ask the membership to so direct you?

A. There was meetings held, yes, sir.

(Testimony of William H. Dunn.)

Q. And they did not so direct you?

A. That's right.

Q. Did you advise them that you thought that the agreement was effective?

A. Well, sure, we told the people what the agreement was.

Q. Mr. Dunn, did either you or Mr. Rossman, in your presence, at the hearing before the Ching Panel in June of 1956, make any statement to the effect that Morrison-Knudsen Company had made an agreement to continue the furnishing of bus transportation and the payment of isolation pay throughout the life of its contract at Hanford Works?

A. Did we make that statement to the Ching Panel?

Q. Yes, sir. A. I did not. [791]

Q. Well, did Mr. Rossman, in your presence, make such a statement?

A. Not to my knowledge.

Q. Mr. Dunn, under what written agreement with Morrison-Knudsen Company providing for the payment of health and welfare contributions and stating the details as to such payments was work resumed at Hanford Project by the Operating Engineers following the work stoppage of March 22nd, 1956?

A. May I have that question again? It is quite lengthy.

Q. Under what written agreement with Morrison-Knudsen Company, the plaintiff in this action,

(Testimony of William H. Dunn.)

providing for the payment of health and welfare contributions and stating the details as to such payments and how they were to be handled, was work resumed at the Hanford Project for Morrison-Knudsen Company after the work stoppage of March 22nd, 1956?

A. Well, I don't know whether there was an agreement, a written agreement, signed by the Morrison-Knudsen Company and our local or not. I don't know.

Q. You don't know of any written agreement?

A. No, sir.

Q. Well, do you know that health and welfare contributions were paid from that time until the completion of the job by Morrison-Knudsen Company? [792]

A. For the members working for them, yes.

Q. You do know that?

A. Well, the report shows it, that's all I have.

Q. Yes. Is it a fact, Mr. Dunn, that you and Mr. Rossman, on behalf of the Operating Engineers, Local No. 370, refused to resume work at the Hanford Project or to submit the dispute to the Ching Panel prior to an agreement on the part of Morrison-Knudsen Company and the other contractors that bus transportation would continue to be furnished and that isolation pay would continue to be paid pending the hearing before the panel?

Now, if you didn't understand that, I will state it again.

A. I didn't understand, I didn't get it.

(Testimony of William H. Dunn.)

Q. Perhaps it would be better if the court reporter read the question, then we will have the identical question.

(Question read.)

A. I don't know, I don't have the answer for it. It seemed to me that we offered to go back on the conditions we came off pending a hearing.

Q. Well, that included the furnishing of bus transportation and the payment of isolation pay, did it not, which you have contended were the conditions under which you stopped work? [793]

A. I believe that's right.

Q. And that you refused to even appear before the Ching Panel until those conditions were placed into effect again?

A. No, we met before the Ching Panel when our people were still off the job.

Q. Yes, but you refused to even appear before the Panel until there was an agreement that those conditions would again be placed in effect, isn't that true?

A. No, I don't think so.

Q. Well, let me see if I can refresh your recollection. Now, the hearing before the Ching Panel took place sometime subsequent to resumption of work, did it not?

A. That is true.

Q. So that the people were actually back on the job about the 5th of June, isn't that correct, 1956?

A. That's right, yes.

Q. And the hearing before the Ching Panel

(Testimony of William H. Dunn.)

wasn't until about two weeks later, isn't that correct? Maybe a week and a half, around the 18th?

A. Something like that, yes, uh-huh.

Q. And isn't it true, Mr. Dunn, that, on behalf of the Operating Engineers, you and Mr. Rossman refused to even appear before the Ching Panel or to consent that it had anything to do with the dispute until the [794] contractors had first agreed that they would put the conditions which you claimed were existing, the furnishing of bus transportation and the payment of isolation pay, back into effect pending the hearing?

A. That being the case, if they had furnished them all the way through, we never would have had a work stoppage.

Q. Well, granted, but you refused to resume work until that had been done, isn't that correct, or to appear before the Panel?

A. I don't remember what the conditions were.

Q. All right. Now, Mr. Dunn, were there some changes in the wage rates for Operating Engineers contained in Exhibit 3, which is before you, over those which had prevailed under the Hanford Works Agreement?

A. Under the Schedule A, yes, sir.

Q. Yes, sir. And the agreement which you have in front of you as Plaintiff's Exhibit 3 went into effect on January 1, 1956, did it not?

A. Right.

Q. Well, now, isn't it a fact, Mr. Dunn, that the wage rates which are specified in Plaintiff's Exhibit

(Testimony of William H. Dunn.)

3, the A.G.C. area agreement, were placed in effect on the work being performed by Morrison-Knudsen Company at Hanford Project prior to the work stoppage on March [795] 22nd, 1956?

A. To my knowledge, they were, yes.

Q. Well, now, they weren't placed in effect under any Hanford Works Agreement, were they, because there was no such agreement?

A. They were placed in effect the same as the wages were placed in effect in the Hanford Works Agreement, under the same conditions.

Q. Well, just tell me what those conditions were, now. A. Under the Davis-Bacon Act.

Q. Well, now, there was no Davis-Bacon Act that put into effect the wages specified in Plaintiff's Exhibit 3, was there, Mr. Dunn?

A. That is prevailing wages in the surrounding territory.

Q. Well, there was no Davis-Bacon Act which placed into effect the wages in Plaintiff's Exhibit 3, isn't that true?

A. Historically, that is the way it has been on the Hanford Project ever since I have been connected with it.

Q. Can you answer the question that I asked you? Either yes, or no, or "I don't know"?

A. I don't know.

Q. All right. But you do recognize that the wage rates which had been negotiated through the Associated General Contractors, Spokane Chapter, Heavy Highway and [796] Engineering Construc-

(Testimony of William H. Dunn.)

tion Branch, and which were incorporated into Plaintiff's Exhibit 3, were placed in effect by Morrison-Knudsen Company on the Hanford Project prior to March 22nd, 1956?

A. They were placed in effect by all contractors on the Hanford Works prior to March 22nd.

Q. Including Morrison-Knudsen, Inc.?

A. That is true.

Q. Is it your testimony, Mr. Dunn, that those wage rates were not placed in effect under Plaintiff's Exhibit 3?

A. Historically, they haven't been. I don't know in this particular case and I don't know——

Q. Those were increases in wages, were they not, Mr. Dunn, rather than decreases?

A. That is correct.

Q. And they didn't relate to payment of isolation pay or to bus transportation?

A. This agreement?

Q. The increases in wages?

A. No, they did not.

Q. Mr. Dunn, do you, on behalf of the Operating Engineers, recognize or admit that the agreement which you have in front of you as Plaintiff's Exhibit 3 was applicable to the Hanford Works after June 5th of 1956?

A. No, we are still not working under those conditions [797] contained in that agreement at the present time on the Hanford Works.

Q. All right, it is your position that the agree-

(Testimony of William H. Dunn.)

ment, Plaintiff's Exhibit 3, has never up to this time become applicable to Hanford Works?

A. No, sir.

Q. And throughout all of that time, your organization has continued to collect health and welfare benefits from the members of the Associated General Contractors having contracts with the Atomic Energy Commission on that job? A. Yes.

Q. Is there any other written agreement that you know of, Mr. Dunn, under which health and welfare benefits could have been paid other than under the agreement which is Plaintiff's Exhibit 3?

A. Yes, we have a short form agreement.

Q. With whom?

A. With the various contractors, our members, that are not members of the A.G.C.

Q. Did you ever have a short form of contract with Morrison-Knudsen Company?

A. That is possible, I don't know.

Q. You don't know? A. No, sir.

Q. Well, do you think as an assistant business agent that [798] you would know if such a contract existed?

A. Well, they could have several agreements with the contractors and I would never know it. I am not in the main office.

Q. Who would be the man to know?

A. Mr. Rossman: He is the business manager.

Q. All right. Mr. Dunn, do you know that in this same identical area of Hanford Works and throughout the years of 1955 and 1956 that members of the

(Testimony of William H. Dunn.)

Operating Engineers, Local No. 370, were working under Plaintiff's Exhibit 3?

A. Can you let me have that question again?

Q. Do you know that throughout the years 1955 and 1956, there were members of Operating Engineers, Local No. 370, working in the Hanford Works Area under Plaintiff's Exhibit 3?

A. They might have been working for the Army Engineers, but not on A.E.C. work.

Q. Well, they were working for the Army Engineers in that same identical area under Plaintiff's Exhibit 3, were they not?

A. Within the confines of the Hanford Area, yes.

Q. Yes, within the same geographical area as the contractors who were working for the Atomic Energy Commission? [799]

A. Well, it was probably 50 or 60 miles difference in the locations of the jobs.

Q. Well, now, I will ask you, Mr. Dunn, are you familiar with the area known as the Ferry Access road? A. I am.

Q. Isn't it a fact that that particular area was about midway between the two jobs that Morrison-Knudsen had there in the F and H area?

A. A portion of that job was across the river, which is north of the river.

Q. Well, isn't it a fact that the Ferry Access road, which was work being performed under contract with the Army, was about midway between and within the Hanford Works Area the two contracts which Morrison-Knudsen Company—or the two

(Testimony of William H. Dunn.)

works which Morrison-Knudsen Company were performing in, I think, the 100-F and the 100-H areas?

A. No, they are not between them. Your Hanford Ferry is 'way down the river from 100-H and F and 100-H is 'way up the river from them.

Q. Well, it is in between them? A. No.

Q. It was within the Hanford Works Area, you will admit that? A. A portion of it, yes.

Q. And there have been contracts performed within the [800] Hanford Works Area for the United States Bureau of Reclamation under the A.G.C. agreements, have there not?

A. Not to my knowledge.

Q. Not to your knowledge? A. No, sir.

Q. Well, when we talk about the works for the Army Engineers or the U. S. Army, we are not talking about a single contract, are we, in the years '55 and '56?

A. I wouldn't have any idea, I don't know what you are driving at.

Q. Well, there was more than one contractor doing work for the U. S. Army Engineers in the Hanford Works Area in 1955 and 1956; you do know that, don't you?

A. If you want to call the Wahluke Slope Area the Hanford Works, it is.

Q. Well, isn't it a part of the Hanford Area?

A. No, it isn't.

Q. It is not within what is known as Hanford Works?

(Testimony of William H. Dunn.)

A. No, that is in part of the controlled area but not the Hanford Works.

Q. Well, let's restrict ourselves to the Hanford—what you call the Hanford Works Area. Was there just one contractor performing work for the U. S. Army or Engineers in that area in 1955 or [801] 1956? A. I don't have any idea.

Q. Did you have any supervision over the work of the Operating Engineers for contractors performing work with the U. S. Army?

A. If there were Engineers out there, they were, yes.

Q. And you are testifying here that you don't know how many contractors there were working for the U. S. Army in the Hanford Works Area in 1955 and 1956?

A. In the Hanford Works Area, I wouldn't have any idea.

Q. And, yet, that was under your supervision?

A. We got fellows that we send out on jobs we don't see them for maybe six months. We don't dog them every day to find out where they are, on what jobs.

Q. And you don't keep track of where your men are working? A. No.

Q. For what contractors?

A. When they get out of work, they come back into the office and we send them on other jobs.

Q. Mr. Dunn, were you present at a meeting held on March 10, 1956, at the office of the Associated

(Testimony of William H. Dunn.)

General Contractors, Spokane Chapter, Heavy Highway and Engineering, in Spokane, Washington?

A. March the 10th?

Q. Yes, sir.

A. I attended meetings in March, but I don't remember the [802] date, don't know. I could have been there.

Q. Well, do you recall—see if I can refresh your recollection about it—that on March 8th a meeting had been held with the Pasco-Kennewick Building Trades Council at which the representatives of the unions were advised that there had been some, at least, attempt to assign bargaining rights to the Spokane chapters of the A.G.C.? Do you recall that instance?

A. Yes.

Q. And that the A.G.C. agreements, including travel pay, were to be considered as effective March 12th?

A. I believe we had a proposal like that, I believe that's right.

Q. Yes. That was at the Pasco-Kennewick Building Trades Council meeting, now, that that statement was made, and that meeting of March 10th was had because of that statement?

A. Yes, I believe that's right.

Q. And there were present at that meeting, were there not, Mr. Mack Sather, who is chairman of the Labor Committee for the A.G.C. Heavy Chapter—

A. That's right.

Q. —and Mr. Dewey Murrow?

A. I believe he was there, yes.

(Testimony of William H. Dunn.)

Q. Who was also a member; Mr. Carl [803] Carbon?
A. Yes.

Q. And Mr. Guess was there? A. Yes.

Q. And Mr. Charles Helvey, who was the head of the Building Chapter of A.G.C.?

A. Well, I am not positive, but I believe he was there.

Q. Do you remember whether any other representative of your organization was present?

A. I am sure if I was there, Mr. Rossman was there.

Q. And Mr. Davis and Mr. Robert Lewis were there on behalf of the Teamsters; do you recall that?

A. I believe they were there, yes.

Q. Now, was it made plain to you at that meeting, Mr. Dunn, by Mr. Sather that the Associated General Contractors, and I am talking about the Heavy Highway and Engineering Construction Chapter now, considered that the agreement which you have in front of you as Plaintiff's Exhibit 3, and the Teamsters' agreement which is here as Plaintiff's Exhibit 2, were considered as then being in effect on the Hanford Works Project?

A. There might have been talk along that line, yes.

Q. Was there a proposal made to the representatives of the Operating Engineers, the Teamsters, and the Cement Finishers on that day with regard to the effectiveness of the two agreements that I have mentioned, the Exhibit [804] 2 and Exhibit 3, and the willingness of the A.G.C. Chapters to consider

(Testimony of William H. Dunn.)

and amend the agreement on account of the hardship features of the application of the agreements to Hanford Works?

A. Well, I believe there was talk along that line.

Q. I am handing you Defendants' Exhibit 7, Mr. Dunn, and ask you if that is the written statement of the proposal which was made by the A.G.C. on behalf of its members, and I am talking of the Spokane Chapter, Heavy Highway and Engineering, at the March 10th meeting?

A. There is no date on it, except pencilled in. I would have to assume this is it. As best I recall, this is the substance of what was proposed.

The Court: May I see that, please?

(Document handed to the Court.)

Q. (By Mr. DeGarmo): In the proposal which you had before you as—I think Defendants' Exhibit 7—was any mention made or consideration given to the furnishing, continued furnishing, of bus transportation?

A. I don't believe it is, I don't recall.

Q. Well, perhaps the agreement speaks for itself.

A. It speaks for itself.

Q. I just wanted to test your memory as to whether you remembered that there was any proposal on behalf of the A.G.C. that bus transportation be continued? [805] A. No.

Q. Do you remember whether there was any discussion that day as to whether it was to be continued?

(Testimony of William H. Dunn.)

A. To my knowledge, it would be discontinued.

Q. Yes, as a matter of fact, you were told at that meeting, were you not, that bus transportation would be discontinued; it would be continued after this meeting until the 19th, which was one week from the date of the meeting? A. I don't recall.

Mr. Etter: That is on the 10th, I think, Mr. DeGarmo.

Mr. DeGarmo: I beg your pardon, it is 12 days, it is until the 19th. You had originally been told it would be discontinued on the 12th, had you not, that the A.G.C. agreement would be placed in effect on the 12th?

A. I don't recall the dates, but I believe that is correct.

Q. And then they agreed that they would continue bus transportation until the 19th, giving you an opportunity to consider the proposal which was made and which you have in front of you as Defendants' Exhibit 7; isn't that correct?

A. I don't recall.

Q. You don't recall. Now, you were also present, were you not, at a meeting held in Spokane in this building on [806] the 16th of March, 1956?

A. I believe so, yes.

Q. Was that a meeting which had been requested by the Federal Mediation and Conciliation Service and which was held in the Federal Building for that reason? A. That is correct.

Q. And is it correct, Mr. Dunn, that there were present at that meeting on behalf of the Operating

(Testimony of William H. Dunn.)

Engineers, Mr. Rossman, Mr. Hollingsworth, Mr. Fulton, Mr. Davis, and yourself?

A. That is correct.

Q. And were there present at that meeting representatives of both of the A.G.C. Chapters?

A. I could not answer, I do not know.

Q. Well, if I suggested to you, Mr. Dunn, that there were present Mr. Guess, Mr. Sather, Mr. Carbon, Mr. Sebeck, Mr. Halverson, and Mr. Helvey, would that assist your memory on that subject?

A. I believe those gentlemen were there, yes.

Q. And Mr. Knapp was there on behalf of the Cement Finishers?

A. I believe he was there, yes.

Q. And Mr. Peterson and Mr. Zeman were there on behalf of the Federal Mediation and Conciliation Service?

A. That is correct. [807]

Q. And Mr. Crowder and Mr. Davis were there on behalf of the Teamsters?

A. I suppose. The minutes speak for themselves, but I think they were there.

Q. Well, perhaps this would refresh your recollection: Do you remember that that was the meeting where Mr. Crowder stated that he had been told by the Western Conference by Mr. Brewster to come there and stay until the matter was resolved?

A. He could have made that statement.

Q. Well, do you remember him making such a statement?

A. I do not, no, sir.

Q. That doesn't help you. All right. You do recall now that you were at that meeting?

(Testimony of William H. Dunn.)

A. I would say yes.

Q. Well, do you recall that at this meeting Mr. Rossman, on behalf of the Operating Engineers, made a statement that the membership of the Operating Engineers had turned down the proposal which was stated in Defendants' Exhibit 7 and which had been made by the A.G.C. Chapter, Heavy Highway and Engineering, at the March 10th meeting?

A. Yes, they turned it down at a special called meeting.

The Court: Endorsed on the exhibit, I believe, is that it was turned down by both unions. There isn't any question about that, is there? [808]

Mr. DeGarmo: I don't believe there is any question that it was turned down by both unions.

The Court: I don't think we should spend time on cross-examination on something that isn't an issue.

Q. (By Mr. DeGarmo): Do you recall, Mr. Dunn, that at this meeting on the 16th of March, Mr. Sather stated to the members present that the A.G.C., Spokane Chapter, Heavy Highway and Engineering, was only able to negotiate on behalf of its two members at the Hanford Works Project?

A. I believe that is correct.

Q. Now, was an offer made at that meeting. Mr. Dunn, on the 16th of March, on behalf of the A.G.C. Chapters, both the Heavy Highway and Engineering and the Building Chapters, to submit the question

(Testimony of William H. Dunn.)

of the Hanford Works to the disputes procedure under the two contracts, Plaintiff's Exhibits 2 and 3?

A. I don't recall what—it was talked, but I don't remember what the substance of the conversation was.

Q. Well, do you recall, Mr. Dunn, that when the question was raised, that Mr. Rossman stated that he would first like to secure a legal opinion as to whether the Exhibit 3 was in effect at the Hanford Works?

A. He could have made that statement.

Q. Well, do you recall him making such a statement, that [809] that was the reason that he had given why he wanted to get that opinion, was because the request was made that they arbitrate or submit this to the disputes procedure under the two contracts?

A. I believe that is right.

Q. At that meeting, Mr. Dunn, is it a fact that Mr. Guess made the statement, directing it to Mr. Rossman and Mr. Davis, "Doesn't the no-strike, no-lockout clause in the agreement mean anything to you?"

A. I don't recall him making that statement.

The Court: The Court will recess for ten minutes.

(Short recess.)

Q. (By Mr. DeGarmo): Mr. Dunn, at the conclusion of the meeting on the 16th of March, 1956, did the union representatives request that the bus transportation and the payment of isolation pay be

(Testimony of William H. Dunn.)

continued for a short period of time to give them an opportunity to consult legal counsel?

A. I believe that is true.

Q. And isn't it a fact that another meeting was held on the 21st of March, 1956, at which you were also in attendance?

A. I don't have the date, but I did attend a meeting right away after the first one. I believe that's right, [810] approximately the 21st.

Mr. DeGarmo: I tried to find a better calendar than this, but I wasn't very successful. Perhaps we can use a microscope and read this one.

The Clerk: Marking the Plaintiff's 11.

Mr. DeGarmo: I want to fix some dates. I merely want to fix some dates, and this is the calendar showing the years '55, '56, and '57.

Mr. Carey: I don't think we are in a position to dispute the calendar, your Honor.

The Court: Well, if it is authentic.

Mr. Carey: I am not an astronomer.

The Court: I think it is more a matter of convenience for the Court. The Court will take judicial notice that certain days fall on certain days of the month—the days of the week fall on certain days of the month.

Mr. DeGarmo: I thought perhaps there would be less room for argument between the witness and myself if we had a calendar.

The Court: I see, all right. Are you offering that?

(Testimony of William H. Dunn.)

Mr. DeGarmo: Yes, I would like to offer Plaintiff's Exhibit 11.

Mr. Etter: No objection. [811]

The Court: It will be admitted, then, Plaintiff's Exhibit 11.

(Whereupon, the said calendar was admitted in evidence as Plaintiff's Exhibit No. 11.)

Q. (By Mr. DeGarmo): Mr. Dunn, I am showing you this calendar which contains the three years of '55, '56 and '57, Plaintiff's Exhibit 11, and I am calling your particular attention to the month of March, 1956, and will you tell us from the calendar on what day of the week fell the 19th of March?

A. Monday.

Q. And you have testified that a meeting was held on the 16th. Will you state on what day of the week that day fell? A. Friday.

Q. All right. Then you have also testified, have you not, that there was at the meeting on the 10th an agreement to continue bus transportation and isolation pay until the 19th; they extended it from the 12th to the 19th. That would be until the Monday? A. A week, yes.

Q. Yes. Then, is it a fact that on this meeting of the 16th, the agreement was to continue the bus transportation and isolation pay until the following Wednesday? [812]

A. I don't recall, but I believe that is correct, I am not positive.

Q. And on what day would the following Wednes-

(Testimony of William H. Dunn.)

day be? A. The 21st.

Q. On the 21st. And was it not stated at that meeting that the busses would run on Wednesday, since a meeting was fixed for 9:30 in the morning on that date, to make certain that there were busses actually running on the day that the meeting was to be held, the postponed meeting of the 21st?

A. I believe that is correct.

Q. Now, at this meeting, the meeting on the 21st of March, which was on a Wednesday, was there some report given by members of the Teamsters and Operating Engineers as to the legal counsel that they had obtained in the interim between the 16th and the 21st?

A. Well, I assume there was, and I was there but I don't recall what the report was.

Q. I see. Do you recall that at the conclusion of that meeting on the 21st, the statement was made that as of the following morning, the A.G.C. agreements would be in full effect, the bus transportation would be discontinued, and isolation pay would be discontinued on the following morning of the 22nd?

A. That statement could have been made, but I don't recall [813] who made it.

Mr. DeGarmo: All right, I have no further questions.

Mr. Etter: No questions.

The Court: That will be all, Mr. Dunn.

(Witness excused.)

Mr. Etter: Mr. Rossman.

The Clerk: Mr. Rossman, you have already been sworn.

The Court: Yes, he has already been sworn.

ARTHUR A. ROSSMAN

having previously been sworn, resumed the stand on behalf of the defendants, and testified further as follows:

Direct Examination

By Mr. Etter:

Q. You are Arthur Rossman, you testified here before, and you are the business representative of the International Union of Operating Engineers, Local 370, and have been such for approximately, I think you stated, 17 years? A. That is correct.

Q. You, then, Mr. Rossman, were the business representative of the Operating Engineers at the time the first work started on Hanford in about 1943? [814] A. Yes, sir.

Q. And have continued to be such business representative from that time until the present time?

A. Yes, sir.

Q. And you were aware, were you not, Mr. Rossman, in 1955 that Morrison-Knudsen was to perform work on what is known as the Hanford Works Project? A. Yes, sir.

Q. And at that time, it is true, likewise, that your representative or one of your employees in that area was Mr. Dunn, who has just testified?

A. Yes, sir.

Q. Now, in accord with the exhibit and contract, it appears work commenced, at least by Morrison-

(Testimony of Arthur A. Rossman.)

Knudsen, on the Hanford Works Project on about November the 28th. Were you aware of the fact that certain of your members were employed on that project in December of that year?

A. Yes, sir.

Q. And did that information come from your personal observation or some other source?

A. It comes from the records we keep in our office. Men are dispatched to these jobs on the dispatch slip or the referral slip, which is made out in duplicate or in triplicate. The original goes to the employer, the second copy stays in the branch office, and the third [815] copy comes to the main office for filing.

Q. And the main office of Local 370 is here in Spokane, Washington? A. Yes.

Q. So that on dispatch slips being made from a sub-local, let's put it that way, or a sub-office of the local in Pasco, in accord with your explanation of making it out in triplicate, one copy of that dispatch slip is kept as a record here?

A. Yes, sir.

Q. And it is kept as a part of the union's business and in the course of the union's business, is it?

A. Yes, sir.

Q. And that is the way in which you know that there were some men, at least, that were dispatched on to that job, is that correct?

A. That is correct.

Q. Now, as I understand it from Mr. Dunn's testimony, there was work performed on the project

(Testimony of Arthur A. Rossman.)

and on the Morrison-Knudsen contract held with the A.E.C., not only in December of 1955, but in January of 1956, is that correct?

A. That is correct.

Q. And you are aware, are you not, of the fact that there were men on the job, at least through your receipt of [816] duplicate or triplicate copies of the dispatch slips?

A. Yes, both months.

Q. Yes, and did you at either of these times, that is, in December of 1955 or in January or thereafter of 1956, have occasion to know of men from your union on the job by personal inspection or visit to the property, that is, the Hanford Works Project?

A. No, I never visited the project.

Q. So that information is based upon these reports, work slips that you have described, and the manner in which they are handled?

A. That's right. I will qualify that. I visited the project a number of times, but never the Morrison-Knudsen projects.

Q. Never the Morrison-Knudsen projects?

A. No.

Q. Had you been acquainted or were you acquainted, or had you engaged, rather, let's put it this way, in bargaining prior to 1955 with a committee known as the Hanford Contractors Negotiating Committee?

A. Yes, sir.

Q. Beg your pardon?

A. Yes.

Q. And for how many years had you dealt with them, Mr. Rossman? [817]

A. The entire period of their existence. I believe

(Testimony of Arthur A. Rossman.)

the committee, as it was last composed, was set up in 1952 or '3. '52 or '3.

Q. 1952. Would this refresh your recollection, was it some short time after the meeting on the project that has been testified to by Mr. Knapp?

A. Yes, sir.

Q. And at which were present various contractors' representatives and, likewise, Mr. Shaw, in charge of A.E.C. operations, and other aides; is that correct? A. That is correct.

Q. And prior to that time, had you been on the labor committee as a representative in negotiation of agreements on the Hanford Project?

A. My local was represented on the committee. I personally wasn't on the committee at all times. I had an assistant there, at that time Mr. Ray Clark, who acted for me.

Q. You knew through Mr. Clark's representation and consultation, did you, of the manner of bargaining that was carried on?

A. That is right, he reported to me weekly.

Q. And at times, I assume, during that period from 1943 to 1952, you, yourself, acted in the capacity, did you not, as representative of the union in bargaining [818] negotiations, if you recall?

A. Yes, at least as an alternate.

Q. I see. Now, from 1952 on until 1955, did you at any time comprise one of the five appointees to the committee representing the various unions engaged in work on contracts with the A.E.C. on the Hanford Works Project?

(Testimony of Arthur A. Rossman.)

A. I don't believe so. I believe I was appointed at one time and requested that Ray Clark represent Local 370 rather than me due to other work.

Q. I see. You were acquainted with the fact that that committee ordinarily went into negotiations comprised generally of five representatives of each side, and by each side I refer to contractors on the Hanford Project who held contracts with the A.E.C. and five representatives of the unions whose men were employed upon the project by those contractors?

Mr. DeGarmo: Just a minute, if your Honor please. I object to that question upon the ground that it assumes a fact not proven and, therefore, is a leading question in that it assumes that the five persons forming the Hanford Contractors Negotiation Committee were the representatives of all the contractors.

The Court: Well, would you accept an amendment that it purported to represent the employers or the [819] contractors?

Mr. Etter: Purporting, yes, I will accept that.

The Court: If you will accept the amendment to the question, I will let it stand.

Mr. Etter: Yes, purporting to represent all the contractors.

A. Yes, I believe the composition of the committee was five from each side. However, at certain meetings they weren't all there; at other meetings, there were additional people there.

Q. I see. But, generally speaking?

(Testimony of Arthur A. Rossman.)

A. That's right, acting on the committee, there were five.

Q. That was the practice, at least, from '52 until '55, is that right?

A. To the best of my knowledge, that is correct.

Q. During that time from 1952 to 1955, do you know of any contractor who worked on the Hanford Project under an A.E.C. contract who did not conform with the agreements reached between those committees?

A. Yes, one.

Q. One. Which one is that?

A. Cisco.

Q. Cisco. Other than Cisco, do you know of any others?

A. I know of no others. [820]

Q. You know of no others?

A. No.

Q. And that is with respect to work that you are acquainted with that had to do with your union members, that is, Operating Engineers?

A. That is correct.

Q. Is that correct?

A. That is correct.

Q. All right. Now, did you carry on, or were there negotiations that you know of in 1955 on behalf of the unions and the Hanford Contractors Negotiating Committee which purported to represent all the employers on the Hanford Works having contracts with A.E.C.?

Mr. DeGarmo: Just a minute, now, Mr. Rossman. In order that the record may be kept clear, if your Honor please, I object to this question upon the grounds that it is again an attempt by the defendants in this action to show prior negotiations

(Testimony of Arthur A. Rossman.)

leading up to the consummation of the contracts in question, Exhibits 2 and 3.

Mr. Etter: I don't know that it is. I am trying to find his course of negotiation with the Hanford Negotiating Committee.

The Court: Well, I will overrule the objection.

A. Yes, there were meetings held in the late part of 1955. [821]

Q. (By Mr. Etter): And did you at any time act, Mr. Rossman, as a representative of the unions involved?

A. I represented my own local union, yes.

Q. And you participated, did you, in certain of these negotiations to which you refer with the Hanford Contractors Negotiating Committee?

A. Yes, sir.

Q. And did you, during the time that you negotiated, receive proposals from them having to do with contracts on behalf of the members that they purported to represent?

Mr. DeGarmo: Just a moment, if your Honor please.

Now, in order that the record may be clear, I wish again to show a further objection to this question upon the ground, first, that any negotiations with the Hanford Contractors Negotiating Committee cannot, under any circumstances, be binding upon the plaintiff until such time as they show that the Hanford Contractors Negotiating Committee was an authorized bargaining representative for and represented the plaintiff in this action; and I wish the

(Testimony of Arthur A. Rossman.)

record to be very clear that I am objecting to any questions as to negotiations between the various unions and the Hanford Contractors Negotiating Committee upon the ground that they can, [822] under no circumstances, be binding upon the plaintiff and are, therefore, incompetent and irrelevant to any issue in this case.

The Court: Well, I have that in mind, Mr. DeGarmo. I certainly would not consider anything here as binding upon the plaintiff unless it is shown that the people engaged in these conferences were authorized to represent the plaintiff. I want to allow every proper opportunity to the defendants to forward their defense here and I am receiving this only insofar as it may have a bearing on what was the agreement and arrangement under the so-called Hanford Contract, and then, of course, it will not bind the plaintiff unless it is shown that the plaintiff in some capacity adopted or agreed to it or came into it subsequently. I have that clearly in mind.

Mr. DeGarmo: As I stated, primarily for the record.

The Court: All right, the record will show your objection, of course. You may proceed.

Mr. DeGarmo: May it be understood that I have a continuing objection?

The Court: Yes, the record may so show.

Mr. Etter: As I understand counsel's objection, so I have it correctly, as to any period, [823] apparently 1955, counsel is contending that Morrison-

(Testimony of Arthur A. Rossman.)

Knudsen is not bound by any act of the Contracting Committee?

Mr. DeGarmo: That is correct.

Mr. Etter: Is that his position?

Mr. DeGarmo: That is correct. 1955 or 1956 or any other time.

Mr. Etter: All right, that is clear.

The Clerk: I have marked the Defendants' 12 for identification.

Q. (By Mr. Etter): Now, as I understand it, Mr. Rossman, from testimony of Mr. Dunn, the plaintiff Morrison-Knudsen commenced work on the project in November and your men were working on that particular part in the Hanford Works Project on Morrison-Knudsen work either on December the 9th, December 9th or December 12th, I think it was Area 100-H, or something like that, if I am not mistaken?

A. Yes, at about that time they started——

Q. At about that time they started?

A. ——excavation.

Q. You knew and were acquainted, were you, with Mr. Ramon Reed, who was the works project manager of Morrison-Knudsen Company at that time?

A. Yes, sir.

Q. And did you, likewise, know Mr. [824] Knack?

A. Yes; on Mr. Reed, I'm not sure just when I met him. It was during the time, about that time.

Q. It was about that time?

(Testimony of Arthur A. Rossman.)

A. Yes. But Mr. Knack I have known for a number of years.

Q. I see. Had Morrison-Knudsen advised you at any time in writing or by word of mouth, either through Mr. Knack, Mr. Reed, or anybody else, that as a contractor on the Hanford Works Project, they were completely and wholly independent of any negotiating committee or committee of contractors having anything to do with negotiation of any contract on that project? A. No.

Mr. DeGarmo: Just a minute. I object to that question upon the ground that it is extremely leading and it calls for a negative inference. The question is, what did we notify them, if anything.

Mr. Etter: Well, put it this way——

Mr. DeGarmo: I object to the question upon the grounds that it is leading.

Q. (By Mr. Etter): I will put it this way: Were you notified at any time by Morrison-Knudsen with respect to anybody representing them on the project? A. No.

Q. You were not? A. No. [825]

Q. Neither affirmatively or negatively, I guess?

A. That's right.

Q. That's right. But, now, on December 15, 1955, from the testimony, there were men of yours who were working on that area that Morrison-Knudsen had contracted to do particular work?

A. Yes, on or about the 15th of December. I am not sure as to the dates.

Q. I see. Well, now, do you recall receiving, or,

(Testimony of Arthur A. Rossman.)

rather, can you, without disclosing anything, if you will just examine the letter and the attachment, I want to inquire about it.

Mr. Etter: It is Defendant Engineers' Exhibit No. 12, Mr. DeGarmo.

A. Yes, I recall that.

Q. You recall receiving this, do you, this Exhibit 12 for identification? A. Yes.

Q. And you are acquainted with Mr. McCaffree's signature? A. Yes, sir.

Q. That's right. Now, do you recall——

The Court: That is already in evidence, isn't it?

Mr. DeGarmo: No, this is not, your Honor.

Mr. Etter: At this time, I will offer it as [826] being a proposal.

The Court: What is the number?

The Clerk: It is number 12.

Mr. Etter: It is number 12.

The Court: Oh, it hasn't been offered?

Mr. Etter: No, I will offer it at this time, your Honor.

Mr. DeGarmo: Well, my opposition to it, if your Honor please, is there has been no showing whatever that there was any proposal made on behalf of Morrison-Knudsen, Inc., or by any person authorized in any way, shape or form to make any proposal on behalf of Morrison-Knudsen, Inc.

The Court: Well, in view of the situation here, the Court's view that the defendants should be permitted to show the course of dealing and the arrangement between the defendants and this com-

(Testimony of Arthur A. Rossman.)

mittee or committees that were representing the employers in the making and carrying out and the cancellation, for that matter, of the Hanford Agreement, bearing in mind, of course, that all this is not in any way binding on the plaintiff unless plaintiff can be shown to be connected up with it by agreement or contract or in some fashion——

Mr. Etter: That is correct.

The Court: ——as that, and the record may show [827] a continuing objection. Well, this is to a specific document, of course.

Mr. DeGarmo: I think I should make a further objection that just occurred to me, if your Honor please, to this document, that, according to the record in this case, the agreement—I don't know on whose behalf this purports to be, I don't think it makes any difference on whose behalf—the document, as I gather it, as to date is December 15, 1955, and I call your Honor's attention to the fact that the written agreements in this case, Plaintiff's Exhibits 2 and 3, that No. 2 is dated December 19, 1955, which antedates the date of the letter proposals before your Honor, Exhibit 3 is dated December 24, 1955, which also antedates the agreement, and, therefore, it must be conclusively presumed, as a matter of law, that any negotiations on behalf of Morrison-Knudsen Company, Inc., and these defendants, who are signatories to these agreements, were precluded by the agreements and incorporated therein in the written agreements 2 and 3.

The Court: Well, it will be admitted.

(Testimony of Arthur A. Rossman.)

(Whereupon, the said document was admitted in evidence as Defendants' Exhibit No. 12.)

Q. (By Mr. Etter): From '52 to '55, it has been testified [828] to, I think, by Mr. Knapp that the number of contractors on the Hanford Project varied and he has a high of I think he said, 100. Do you recall that, Mr. Rossman?

A. Yes, approximately a maximum of 100, including the specialty contractors and subcontractors.

Q. I see. Now, within your knowledge, each year did your committee, that is, the union representatives and the Hanford Contractors Negotiating Committee, purporting to represent employers on the Hanford Works Project with A.E.C. contracts, negotiate agreements from year to year?

A. Yes, we dealt with the committee; we never dealt separately with any contractor unless it was a dispute.

Q. I see. Now, was it customary at any time during that period, or did you at any time during that period or anyone else that you know of, secure written or oral authorizations of authority from all of the contractors who came on the project for an agency delegation by them through the Hanford Contractors Negotiating Committee before you negotiated with that committee?

A. No, the contractors negotiating——

Mr. DeGarmo: Just a minute——

The Court: Just a minute.

Mr. DeGarmo: May I state an objection?

(Testimony of Arthur A. Rossman.)

The Court: Wait until Mr. DeGarmo makes an objection. [829]

Mr. DeGarmo: I think this will be a continuing objection. I wish it to be shown that the Hanford Contractors Negotiating Committee agreement, which is the agreement in evidence here as Plaintiff's Exhibit 6, states upon its face that it is an agreement between the signatory construction contractors, represented and acting for contractors who presently or during the life of this agreement become signatory to this agreement, and therefore this is an attempt to vary the terms of the document itself, which states that it only purports to be—he says that this Hanford Contractors Negotiating Committee, in his questions he now has restricted it “purporting to act on behalf of the contractors.” They don't purport to act except for those who become signatory to the construction agreement by its specific terms and, therefore, I think that any question which states that they “purport to” is contrary to the document itself.

Mr. Etter: Doesn't that present a problem of how you become signatory? I would like to ask Mr. Rossman one other question.

Q. Mr. Rossman, have you seen contracts, or this contract, before? You have one, do you not?

A. Yes, sir.

Mr. Etter: I think that is the one. Which [830] one were you referring to, counsel?

Mr. DeGarmo: The one you have in your hand.

Mr. Etter: The one I have in my hand.

(Testimony of Arthur A. Rossman.)

Q. Is this it (indicating)?

A. The Hanford Works Agreement.

Q. You have one precisely the same over there, do you not? A. I believe so.

Q. That's right. From '52 to '55, did any of the contractors who were working on that project under A.E.C. contracts and who hired Operating Engineers ever sign that contract individually?

A. To the best of my knowledge, no.

Q. They did not? A. No.

Q. And, to the best of your knowledge, was it a practice for any contractor, no matter who it was, on that project with an A.E.C. contract, to sign this so-called Hanford Agreement? A. No.

The Court: The record may show your continuing objection, if you wish here, Mr. DeGarmo.

Mr. DeGarmo: Yes, I do wish it to show.

The Court: All right.

Mr. DeGarmo: Because I think it is contrary to the document itself; also, to the fact of the [831] agreement.

The Court: All right, go ahead.

Q. (By Mr. Etter): And so far as you know, you did not at any time, as I understand it, Mr. Rossman, ever secure specific and special authorizations from any of the contractors or any or all of them on that project with A.E.C. contracts from 1952 to 1955 for delegation of authority to the bargaining committee? A. No.

Q. Now, as I understand it, you continued to

(Testimony of Arthur A. Rossman.)

negotiate in January and thereafter with the Hanford Contractors Negotiating Committee?

A. Yes, sir.

Q. Did you at any time negotiate with the Associated General Contractors during the time from January the 1st until about the 8th or 10th, when this delegation or assumed bargaining right was assigned to A.G.C.?

A. With reference to the Hanford Project?

Q. Yes. A. No.

Q. You did not? A. No.

Q. Were your negotiations with reference to the Hanford Project carried on exclusively during that period of time with the Hanford Contractors Negotiating Committee? [832] A. I believe so.

Q. And during that time, can you tell me about how many meetings, if you recall, that you attended as a union representative with representatives of the Hanford Contractors Negotiating Committee, purporting to represent all of the contractors on the Hanford Project with A.E.C. contracts?

A. During what period of time?

Q. From January the 1st until the assignment over, whenever it may have been, 8th or 10th of March, something like that?

A. I can't tell you exactly. A number of times, two, three, six.

Q. Well, were these all formal meetings?

A. No.

Q. How many formal, arranged meetings do you recall, if you do recall?

(Testimony of Arthur A. Rossman.)

A. I recall at least two, I think there were one or two more.

Q. And at any of these meetings, was any representative of Morrison-Knudsen present?

A. Yes.

Q. Who was there? A. Ray Reed.

Q. And do you recall whether he was present at one meeting [833] or more than one meeting?

A. Two.

Q. Did he make any statement at any time?

A. At least two.

Q. Beg your pardon?

A. I would say at least two.

Q. At least two.

The Court: Who was that you said was present?

A. Ray Reed.

Q. (By Mr. Etter): Project manager?

A. Yes.

The Court: Yes, I know who you mean.

The Clerk: I have marked the Defendants' 13.

Q. (By Mr. Etter): Now, Mr. Rossman, were you in attendance at the meeting of January the 5th in the Labor Hall at Pasco, Washington, in the afternoon at about 2:30, between representatives or a number of representatives of the labor unions interested in the Hanford Project and Mr. Knack, I believe it was, and Mr. Reed? A. Yes, sir.

Q. You were. And do you recall that these men who have been named were present, that is, you and Mr. Dunn and Mr. Knapp and others, is that correct? A. Yes.

(Testimony of Arthur A. Rossman.)

Q. Do you remember any others that were there that you can [834] recollect at this time?

A. Well, I believe Sewell Davis was there, Bud Shirk.

Q. Bud Shirk. Mr. Clarey?

A. Mr. Clarey.

Q. Anybody else?

A. Mr. King, I believe, was present.

Q. Mr. King. What is Mr. King's capacity?

A. Millwrights, Carpenters and Millwrights.

Q. I see. And would you agree that there were approximately, say, 15 of the union people that were there, in addition to the two men from Morrison-Knudsen? A. That would be a close estimate.

Q. Now, it has been testified it was a pre-job conference. I would like to have you tell us, if you will, what, as you remember, was said at the meeting by the representatives of the plaintiff and, likewise, by the unions?

A. Well, we were all interested when a good-sized job starts to determine the requirements for members to be employed on the jobs, the conditions under which they will work, the approximate work schedule. There are many phases of some of these jobs. There was excavation, steel erection, piping work, electrical work. It helps us to know in advance what the approximate schedule of the construction schedule will be.

Q. I see. Is that the purpose, ordinarily, of a pre-job [835] conference?

(Testimony of Arthur A. Rossman.)

A. Ordinarily, that is the purpose of a pre-job conference.

Q. Is that the usual or the unusual thing to have a pre-job conference on a large job?

A. It is the usual procedure.

Q. It is the usual procedure?

A. We sometimes have pre-bid conferences.

Q. Pre-bid conferences? A. That's right.

Q. Is that a conference, I presume, in which you advise of costs and number of men, one thing and another, prior to the bid of a contract?

A. That's right, we have those occasionally.

Q. You have those occasionally. But the pre-job conference on a fairly substantially large job is the ordinary procedure, is that correct?

A. That is correct. Actually, this particular pre-job conference was held sometime after the job actually started, but it wasn't into its major aspects as yet.

Q. I see. As a matter of fact, this pre-job conference, so far there had been one part of the excavation work that had been completed, is that correct? A. Yes.

Q. And which had served as employment for some of your members? [836] A. That's right.

Q. And the Teamsters, I think, is that correct?

A. Yes, I believe so.

Q. In December. All right, now, was there some discussion held at that time with regard to the existing conditions of the contract on the Hanford Project, do you recall? A. At the——

(Testimony of Arthur A. Rossman.)

Q. At the pre-job conference? A. Yes.

Q. And will you tell us who had the conversation, as you recall it?

A. At the meeting or prior to the meeting? There were two meetings that day, you know.

Q. There were two meetings. All right, at the first meeting, was there anything discussed by the pre-job conference at the first meeting?

A. I don't believe so, other than there was mention made where and when it would be held.

Q. Where it would be. That was in the morning, wasn't it, the first meeting? A. That's right.

Q. And the second meeting was the pre-job conference, the one I am directing your attention to now, is that correct? A. That's right. [837]

Q. All right, at that second meeting, who had some conversation, what was it that had to do with the existing conditions and contract at the Hanford Works Project?

A. Well, by virtue of the fact that the Teamsters, the Engineers, and the Cement Masons were the only three unions involved or interested or concerned with bus transportation and job isolation pay and the parking lot at Richland, after the first meeting we delegated or designated Lee——

Mr. DeGarmo: Just a minute, just a minute. If your Honor please, I object to this testimony upon the ground that it is referring to some understanding or arrangement held outside of the hearing of any representative of the plaintiff in this action. He

(Testimony of Arthur A. Rossman.)

can tell what was said at the meeting, but what they agreed on beforehand——

The Court: Yes, I think the testimony should be confined to the meeting in which a representative of the plaintiff was present.

Mr. Etter: Yes.

The Court: Is this the meeting of the 5th of January, 1956?

A. Yes, sir.

Mr. Etter: Yes, the afternoon of the 5th. [838]

Q. Just tell us about the conversation.

A. Well, Mr. Knapp, Charlie Knapp, near the end of the meeting, other things had been disposed of, the work schedule and the number of men to be employed and the approximate length of time that would be consumed in completing the contract, and Mr. Knapp asked what the company's intention was with regard to bus transportation and job isolation pay in view of the fact that it had been questioned within the past week or two.

The Court: Pardon me just a moment. I don't wish to unduly restrict defendants here and I think this came up in connection with the testimony of another witness. While I think that the testimony should be confined, so far as making it binding on the plaintiff is concerned, to what was actually said and done at a meeting at which the plaintiff's representatives were present, nevertheless if something that happened outside is necessary to explain and to enable people to understand what was done in the

(Testimony of Arthur A. Rossman.)

conference, I think that that could be done, that could be shown.

Mr. Etter: All right.

The Court: For instance, what I have in mind was, if somebody asked a question which, by pre-arrangement, was to be asked for all of them, I think that you should be able to show that. [839]

Mr. Etter: Well, that is what I want to show.

The Court: Over objection of counsel, if he wishes to make the objection.

Mr. DeGarmo: I think only if that prearrangement was brought to the information of the plaintiff, if your Honor please. What are they relying upon, estoppel?

The Court: I don't know what they are relying upon, but if somebody asked a question and the others sat there and said nothing and they understood it was to be asked for all of them, I think that they have a right to show that that was the situation.

Mr. DeGarmo: Well, I submit, if your Honor please, unless they can show that that information was brought home to the plaintiff. Now, do you mean that if in a meeting if someone, some person speaks up and he says, asks a question, that he can create a contract on behalf of other people that the other contracting party knows nothing about? That is what they are relying upon as a contract here. Please remember that they have pleaded an agreement.

The Court: I think that depends upon the situa-

(Testimony of Arthur A. Rossman.)

tion. If labor unions and an employer have a conference, I assume that the employer is realistic enough to understand that those people are [840] there representing their unions and what is said in behalf of one applies to all of them; that it isn't as if three labor union representatives met with one employer for a particular job. I don't think that that can be divided up into separate compartments as to each union and each union's representative; I think if the employer says, "Yes, we will give you the job pay," and says it to one of the representatives, he is saying it to all of them. Maybe I am wrong on that, I will hear your argument on it, but at least under that theory, I think they are entitled to show or bring out this testimony and evidence which I have in mind.

Mr. DeGarmo: Well, I don't think that this is the time to argue it particularly, but I wish to point out to your Honor this distinction in the ruling that you are making:

I think that if your Honor, as the Judge sitting here, might have the reason and might have cause to hold that if a statement was made under such circumstances, that it would be understood by a party to be binding upon all, that then you might find that a contract was made with all, but what I am objecting to is some prearrangement between the parties not stated to the plaintiff. And I think that is absolutely barred from this testimony unless they can show that this [841] prearrangement was brought home to the plaintiff.

(Testimony of Arthur A. Rossman.)

Now, one witness has already testified here, and unless they want to dispute their own witness, and I don't think they can, he has testified that there was no such statement made. Now, I think the facts and circumstances in the meeting itself can be shown, because we were there, but what I am objecting to is some preliminary conference at which they reach some agreement between themselves, not communicated to the plaintiff.

The Court: This is a trial before the Court, Mr. DeGarmo——

Mr. DeGarmo: Yes, I appreciate that.

The Court: I don't wish to have to stop here and hear counsel's argument on every phase of this case as to what the effect of these particular negotiations are, whether a plaintiff is bound or is not bound, and rather than be too exclusive, I think I should hear the other side and let everything in that I think might be of value and then hear you on the legal effect of it after the conclusion of the case. I don't want to have to stop and argue the law points every time we have a witness put on the stand. This case would go into August here instead of July, as it promises to now, the way we are going. [842]

So that I am going to let this in and, without making any decision, my remarks were simply directed to the point that it might be material, that it might have some bearing on a decision which I might make later on. I am not making the decision now; don't misunderstand me on that.

(Testimony of Arthur A. Rossman.)

Mr. DeGarmo: Yes, I appreciate that.

The Court: And the record may show your objection.

Mr. DeGarmo: And the record is clear.

The Court: All right. I don't think that situation even exists as to this, but I don't want to be too exclusive, and I think that if an inference is to be drawn, why, somebody sits silent in a conference, he ought to have a right, because it was arranged that this man was to speak for him, certainly it is a matter of common sense, I think, that he should be permitted to show that.

Court will recess now until 2 o'clock. I propose to run until 5 today rather than 4:30.

(Whereupon, the trial in the instant cause was recessed until 2 o'clock p.m. this date.) [843]

June 17, 1957

(Whereupon, the trial in the instant cause was resumed pursuant to the noon recess, all parties being present as before, and the following proceedings were had:)

The Court: Let's see, Mr. Rossman.

ARTHUR A. ROSSMAN

having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination
(Resumed)

By Mr. Etter:

Q. Shortly before we adjourned for the noon recess, I asked you, I think, to relate the conversation that occurred at the meeting in the afternoon of January the 5th of 1956, at which certain people were present that you described, including Mr. Knack and, I think, Mr. Reed of Morrison-Knudsen, with respect to the policy, as I understand it, or the employment conditions or otherwise, that were going to prevail. Do you recall me asking you that?

A. Yes. [844]

Q. Will you tell me what that conversation was and what you remember of it, in substance and effect, and who the parties were and what they said, as you recall, please?

A. Yes. Well, that was, as I said, at the late part of the meeting, the meeting was about to break up, and, as I recall it, I was anxious to get away and either catch a plane or get to Spokane by car to another meeting. I was interested in the answer to those questions and when Mr. Charlie Knapp asked the question regarding bus transportation and isolation pay of Mr. Lee Knack——

Q. Do you recall how he asked that?

A. Yes, what their position would be in regard to those items in view of the fact that there had

(Testimony of Arthur A. Rossman.)

been some discussion as to the possible discontinuation of them. And I can't quote the verbatim answer, of course, but I was satisfied with the answer, something said about they had a job to do and were anxious to get on it and get the contract completed, they bid the job on the basis of the conditions as they existed on the job at the time, and they intended to carry those out. I think there was also something said about—by Mr. Knack—to the effect that they were a new contractor on the job and weren't coming in there to establish a [845] precedent.

Q. Do you recall anything further than that?

A. That is about all, as I recall it. I left immediately when I got the answer to that question.

Q. I see. And had there been some arrangement, or can you state yes or no, some arrangement with Mr. Knapp, so far as the Engineers and Teamsters were concerned, to inquire about these specific topics?

Mr. DeGarmo: Did you say Mr. Knack or Mr. Knapp?

Mr. Etter: With Mr. Knapp, had there been any arrangement?

A. Mr. Charlie Knapp?

Q. Yes.

A. Yes, we discussed it prior to going into the meeting.

Q. And what was the understanding that was had with respect to his inquiries?

A. Well——

(Testimony of Arthur A. Rossman.)

Mr. DeGarmo: It is understood that my objection goes to this?

The Court: Yes.

A. The problem for the three unions was identical, for the three unions involved, all the other crafts having negotiated their travel pay, transportation items. We saw no point in me asking for the Engineers, Mr. Davis for the Teamsters, and Mr. Knapp for the Cement Masons. [846] If it applied to one, it would certainly apply to all. That was, at least, my assumption, and had Mr. Knapp failed to ask the question, I undoubtedly would have asked it.

Q. (By Mr. Etter): I see. Now, you say it involved you three unions, specifically?

A. That's right.

Q. The ones you mentioned, Mr. Knapp's, the Operating Engineers, and the Teamsters Union, is that correct?

A. That is correct.

Q. All right. Now, thereafter, after January the 5th, I gather from your testimony you continued to negotiate with the Hanford Contractors Negotiating Committee?

A. Yes.

Q. Now I will hand the Defendants' Exhibit for identification 13 to you and ask you to examine that for just a moment, Mr. Rossman, and tell me if you recognize it?

A. Yes, I received it.

Q. And, without disclosing its contents, you did receive it?

A. Yes, I did.

Q. From whom?

(Testimony of Arthur A. Rossman.)

A. Kenneth M. McCaffree, executive secretary to the Hanford Contractors Negotiating Committee.

Q. I see, all right. [847]

Mr. Etter: You have seen this?

Mr. DeGarmo: Yes, I have.

Mr. Etter: I would like to move for the admission of the Defendants' Exhibit 13, your Honor, in evidence.

Mr. DeGarmo: I object to the admission of the document upon all of the grounds previously stated with respect to Defendants' Exhibit 12 and upon the further ground that, if your Honor will observe the second page of the document about the last paragraph, before the place for signatures, it is stated: "This memorandum of agreement is explicitly recommended by the Hanford Contractors Negotiating Committee to construction contractors presently working at the site of the Hanford Works." It doesn't purport to be on behalf of anybody, it is only a recommendation.

Mr. Etter: I concede that it is a proposal for bargaining. The extent of it, of course, is open to debate.

The Court: Well, it will be admitted. I will consider the effect of it later.

Mr. Etter: Yes.

(Whereupon, the said document was admitted in evidence as Defendants' Exhibit No. [848] 13.)

Q. (By Mr. Etter): This was, as it appears to

(Testimony of Arthur A. Rossman.)

be, a proposal, as indicated, from Mr. McCaffree, is that correct? A. Is that the same one?

Q. Yes. A. Yes.

Q. Do you recall that? A. Yes.

Q. Can you tell me whether or not that was accepted by your local? A. No, it was not.

Q. It was not. Handing you at this time Defendants' Exhibit 14 for identification, I will ask you to examine that. A. Yes.

Q. You received that, did you, in March?

A. As most of those proposals were, they are undated.

Q. Well, I mean, other than the date, the month of March? A. Yes, yes.

Q. And, as I understand it, after the 8th of March, any negotiations you held after that, or the 9th, whatever the date might have been, you held them with the A.G.C. people and not this committee?

A. That's right.

Q. That's right. So would you say that you received this [849] prior to the date of the so-called assignment of bargaining rights by Hanford Contractors Committee to the A.G.C.?

A. Yes. I would say that was on or about the 9th or 10th of March.

Q. Well, it would be prior, though, to the assignment of bargaining rights? A. That's right.

Mr. Etter: I move the admission of this, Mr. DeGarmo. It is the other one. I move at this time, your Honor, that Defendants' Exhibit 14 be admitted, which is another proposal, as was 13.

(Testimony of Arthur A. Rossman.)

Mr. DeGarmo: The same grounds of objection as stated with respect to Defendants' 13, if your Honor please.

The Court: It will be admitted on the same basis as 13, then.

(Whereupon, the said document was admitted in evidence as Defendants' Exhibit No. 14.)

Q. (By Mr. Etter): Now, this Exhibit No. 14 was a proposal made by the Hanford Contractors Negotiating Committee to the extent that it is indicated on behalf of the purported contractors represented by that committee, was it, to you? [850]

A. Yes.

Mr. DeGarmo: I think that the document speaks for itself, as to who it is submitted on behalf of. It states it is merely recommended.

Mr. Etter: I stated to the extent it merely qualifies. I am just trying to put it all in, whatever it may purport to be.

Q. It was presented to you, was it not?

A. Yes.

Q. And did the union act with regard to this proposal? A. Yes.

Q. Did they accept or did they reject it?

A. Rejected it.

Q. Now, it was after that date, was it, that you were notified of an assignment of bargaining rights by the Hanford Committee, as indicated by a copy of this letter which is indicated as Defendants' Exhibit No. 10——

(Testimony of Arthur A. Rossman.)

A. Yes. What was that question again?

Mr. Etter: Would you read the question, please?

(Question read.)

A. Yes, while I am not positive on the date on that last exhibit, it would have to have been prior to this because they weren't making any offers after that.

Q. (By Mr. Etter): After that. And after you had received this letter of March 8th, there were no further [851] negotiations with the Hanford Contractors Negotiating Committee, as such?

A. That's right.

Q. But all negotiations thereafter were with, as I understand it, the A.G.C. representatives?

A. That's right, with representatives of the Hanford Committee sitting in at times.

Q. Sitting in at times? A. That's right.

Q. I see. And it was on the date indicated, the 10th when, during the first meeting, was it, with the A.G.C. after this assignment of bargaining rights indicated in the letter of March 8th, or Defendants' Exhibit 10, that this proposal, which is Defendants' Exhibit 7, was made to your group?

A. Yes. While, again, it is undated in the type, it is indicated here in pencil and I will have to assume that that is the correct date.

Q. And, likewise, as is indicated there, that was rejected? A. That's right. [852]

(Testimony of Arthur A. Rossman.)

Cross-Examination

By Mr. DeGarmo:

Q. Mr. Rossman, were you present in court when Mr. Knapp stated that he had first been under the impression that [860] Mr. Davis was at this afternoon meeting on the 5th of January, 1956, but had discovered that that was in error? I just want to know if you were present in court when he so testified?

A. I think I have been present all during these proceedings.

Q. Well, did you hear him so testify?

A. What was it he said, again?

Q. That he had at first been under the impression that Mr. Sewell Davis was at this afternoon meeting on the 5th of January, 1956, but that he had discovered, through checking the minutes and the list of people there, that that was not so?

A. I seem to recall that.

The Court: Who is Mr. Davis' successor in the Teamsters?

Mr. Carey: Pardon?

The Court: Who was Mr. Davis' successor in the Teamsters?

Mr. Etter: Mr. Lewis.

Mr. Carey: Mr. Lewis.

Mr. DeGarmo: Robert Lewis.

The Court: I suppose the reporter could take time enough to straighten it out, but I was under

(Testimony of Arthur A. Rossman.)

the impression that he first thought Mr. Lewis was there and then discovered his mistake and learned that Mr. [861] Davis, who is now deceased, was there. Maybe I am wrong about that.

Mr. DeGarmo: Mr. Davis was alive at that time.

The Court: Oh.

The Witness: I'm not sure either one of them were there at the time. Sewell Davis was present that day, however.

Q. (By Mr. DeGarmo): He was present at a morning meeting, was he not, which was held in Richland at which you were present?

A. Yes, I saw him that day.

Q. You are sure that he was present at the morning meeting?

A. One or the other of them, or that I saw him that day, yes.

Q. Well, now, let's go back a moment. Who was present at the afternoon meeting on the 5th of January representing the Teamsters, if anybody?

A. I don't know.

Q. Well, do you not know that there was someone there, or do you know who the particular person was?

A. I am not sure there was anyone there representing the Teamsters. I have a feeling there was. I know Mr. Charlie Knapp spoke for all of us.

Q. Yes. Well, I notice that in answer to a question of your counsel, you stated there was some arrangement by [862] which Mr. Knapp was speaking for all three, that is, the Operating Engineers,

(Testimony of Arthur A. Rossman.)

Teamsters, and the Cement Finishers, and I also noted in your testimony this morning, Mr. Rossman, that you started to talk about a conference held in a parking lot immediately before the January 5th afternoon meeting. Now, did you see Mr. Sewell Davis in the parking lot?

A. I couldn't say.

Q. Well, when was the so-called arrangement and with whom?

A. With myself, Bill Dunn was there, Charlie Knapp was there, and I presume some representative of the Teamsters. He would have to have been to give Mr. Knapp the authority to speak for us. We assembled after the morning meeting at the parking lot where we had our cars in Richland. I am not even sure where we ate lunch. It might have been at the Desert Inn or it might have been down in Pasco. We were together all during the period, virtually all the time, during the period between the two sessions at one place or another.

Q. That is what I am trying to find out, Mr. Rossman, is who is this individual on behalf of the Teamsters that delegated the authority to Mr. Knapp to speak for the Teamsters?

A. Not being positive, I don't know.

Q. Well, now, prior to the time that Mr. Knapp asked this [863] question at the afternoon meeting of January 5th, 1956, did he make any statement to Mr. Knack as to who he was speaking for?

A. Did Mr. Knapp—Mr. Knack or Knapp?

Q. Mr. Knapp, who, you say, was the spokesman

(Testimony of Arthur A. Rossman.)

by agreement. Did he make any statement to Mr. Knack, K-n-a-c-k, as to whom he, Mr. Knapp, was speaking for when he asked the question?

A. I don't remember whether he specifically mentioned the Teamsters and the Engineers or not, but, as I previously stated, we were all in the same position with reference to job isolation pay and bus transportation and an answer to the Cement Masons would certainly apply to the Teamsters and Engineers.

Q. Well, you have already stated, Mr. Rossman, that the answer to this question was peculiarly interesting to only the Operating Engineers, Teamsters, and Cement Finishers, haven't you, at this meeting? A. I believe so.

Q. Now, that is not a fact, is it?

A. In what way?

Q. As of January 5th, 1956, there were a number of other crafts that were equally interested in the question of job transportation and isolation pay and present at this meeting? [864]

A. It is my recollection that all the other crafts, with the possible exception of the Carpenters, had settled by that time.

Q. Well, are you as positive of that as you are of the statement that you attribute to Mr. Knack that day? A. No.

Q. As a matter of fact, the Carpenters didn't sign until after that date, isn't that correct?

A. I don't know.

(Testimony of Arthur A. Rossman.)

Q. As a matter of fact, the Laborers hadn't signed as of that date, had they?

A. No, I seem to recall the Laborers signed at some subsequent date out at Richland at which I was also present.

Q. And they were interested in transportation and isolation pay, were they not?

A. If it wasn't settled, I would presume so.

Q. And the Carpenters were interested in transportation and isolation pay, were they not?

A. Well, I can't speak for the Carpenters.

Q. Well, you know that they had been receiving such, do you not, under the Hanford Works Agreement?

A. I'm not even sure they were receiving the identical isolation pay that we were. Some of the other crafts had different travel conditions than we had. [865]

Q. How about the Millwrights, were they interested?

A. Yes, but I am quite positive they had a different arrangement prior to the time of these negotiations.

Q. You are sure of that?

A. No, I am not.

Q. How about the Boilermakers?

A. Well, I know from tradition and practice the Boilermakers negotiate for the eleven western states with their own contractors and impose their own agreement on any contractor that works in that area, so they had no particular problem.

(Testimony of Arthur A. Rossman.)

Q. How about the Ironworkers, had they signed a separate agreement, area agreement, at that time?

A. I don't know.

Q. Were they interested in isolation pay and job transportation?

A. If I told you, I would be guessing; I don't know.

Q. Well, then, when you stated this morning that the only three crafts present at this meeting who were interested in job transportation and isolation pay were the Operating Engineers, the Teamsters, and the Cement Finishers, that was not a correct statement, was it, Mr. Rossman?

A. Partly, yes, I believe. I know that some of the other crafts had already negotiated something in lieu of bus [866] transportation and were not riding the busses.

Q. Well, now, you participated in the meeting that morning, did you not, Mr. Rossman?

A. Yes.

Q. At Richland? A. Yes, sir.

Q. Will you tell us who were present at that meeting?

A. Some contractor representatives. Mr. DeGarmo, in addition to the meetings I attended at Richland and Pasco and Spokane during this process, I was attending meetings in Idaho Falls, Pocatello, down in the Columbia Basin, the Reclamation Bureau, it was pretty hard for me to recollect what took place at each specific meeting. I cover a state and a half in these negotiations.

(Testimony of Arthur A. Rossman.)

Q. Well, I will attempt to refresh your recollection somewhat. Was Mr. Lee Knack present at the morning meeting at Richland?

A. Yes, I believe he was.

Q. That meeting was held in one of the upstairs offices in the Administration Building of the Atomic Energy Commission?

A. I believe it was held in the room, in the conference room, adjacent to one of the Atomic Energy Commission offices. [867]

Q. Well, in any event, it was in the Administration Building at Richland; you do remember that?

A. I believe that one was. Occasionally, if the meeting was large, we went to a building next door down the street a door or two.

Q. Can you give us any recollection, Mr. Rossman, of what happened at the morning meeting? Mr. Rossman, first let me ask you if Mr. Knapp was there. A. I'm not sure.

Q. Well, again, I will attempt to refresh your recollection. Do you recall, Mr. Rossman, that at this morning meeting Mr. Kenneth McCaffree was there, Mr. Knapp was there, and there was considerable discussion between them as to exactly whom Mr. Knapp represented?

A. No, I don't recall any such discussion.

Q. Do you recall that at that meeting Mr. Knapp accused Mr. McCaffree of stealing members away or detracting them away from the Pasco-Kennewick Building Trades Council by entering into separate negotiations with them?

(Testimony of Arthur A. Rossman.)

A. I remember there was some discussion about Mr. McCaffree being instrumental in the breaking up of the Pasco-Kennewick Building Trades Council, yes.

Q. And you don't remember that on a number of occasions, not once but on a number of occasions, Mr. Knack directed [868] the direct question to Mr. Knapp, "Who do you represent?"

A. Yes, now that you mention it, I recall that question.

Q. And do you remember that Mr. Knapp refused and did not answer that question at any time during that meeting as to who he represented?

A. I don't recall that, what his answer was.

Q. Well, you don't remember his stating who he represented, do you?

A. The Pasco-Kennewick Building Trades Council and the affiliated unions.

Q. But did he state who the unions were that were affiliated at that time and whom he represented

A. I don't know whether he did or not.

Q. Do you recall that at that morning meeting, Mr. Rossman, Mr. Knack, and I am speaking of Mr. K-n-a-c-k now, Mr. Knack, stated to you that the Morrison-Knudsen Company stood in a little different position than the other contractors at Hanford because they had a contract with you Operating Engineers 370 and with the Teamsters and Mr. Davis was present in the meeting at the time,

(Testimony of Arthur A. Rossman.)

Sewell Davis? Do you remember that statement having been made at the morning meeting?

A. No, I can't say that I do, although it might have been asked.

Q. Do you deny it, sir? [869]

A. No, I don't deny it; I just don't remember.

Q. You have mentioned, Mr. Rossman, that there were members of the Operating Engineers present on the Hanford Project's work which Morrison-Knudsen Company had contracted to do with the Atomic Energy Commission under the contract, Plaintiff's Exhibit 1, in the month of December, 1955. I wish to ask you if those men were men employed by Morrison-Knudsen Company or if they were men employed by a subcontractor of Morrison-Knudsen Company?

A. Most of them, perhaps all of them, were employed by the Irwin Company, a subcontractor of the excavation contract.

Q. Well, now, as a matter of fact, Mr. Rossman, you make contractors with subcontractors as well as with prime contractors, do you not?

A. Not ordinarily. We hold the prime contractor responsible for the activities of the subcontractor. After all, Mr. Irwin had no contract with the Atomic Energy Commission, his contract was with Morrison-Knudsen, I presume. They usually are.

Q. Well, do you make no contracts with an organization such as the Irwin Construction Company?

A. I don't think we had one with them.

(Testimony of Arthur A. Rossman.)

Q. Well, that wasn't the question, whether you had one with [870] them; I am asking if you make such contracts with such organizations?

A. We would if they took prime contracts, and the Irwin Company didn't do just subcontracts, they might be subcontracting on one project and a prime contractor on another.

Q. You have stated that you knew the men were there because of the records which were kept by the office of the Operating Engineers, is that correct?

A. That's right.

Q. Now, would those records also show, Mr. Rossman, whether there were operating engineers working for contractors on the Hanford Project under contract with the Army Engineers?

A. I presume so.

Q. Does Mr. Dunn have access to those records?

A. They are not in his office, they are in the Spokane office. He has duplicates in his office. As explained this morning, the referral slips are made out in triplicate. The original goes to the employer, the duplicate stays in the branch office, and the triplicate comes to the main office in Spokane for the permanent records, and, in a great many cases, the men aren't dispatched to the job. In the case of Mr. Irwin of the Irwin Construction Company, I doubt very much if the men were [871] dispatched to the Irwin Company for a specific job, because Irwin had members of ours on his pay roll, perhaps, for a year or two prior to the time he

(Testimony of Arthur A. Rossman.)

went on that job, and he just transferred that job there and he stayed.

Q. You said that you knew the men were there because of the records in your office?

A. Yes.

Q. Well, would not the same information be there with respect to other contractors on the project employing Operating Engineers?

A. Yes, for the most part. The records aren't 100 per cent accurate. Men are referred to an employer to go to work and, until he reports back that he is out of work, we assume he is still there. He might leave and go to some foreign country to a job and we wouldn't know he was gone until he sent his dues in from some other place.

Q. Mr. Rossman, were there Operating Engineers working in the Hanford Works Area in 1955 and 1956 under the terms and provisions of Exhibit 3, which is the Operating Engineers' agreement?

A. Not for any Atomic Energy Commission contractor.

Q. Was that the question I asked you, Mr. Rossman?

Mr. DeGarmo: Will you read the question?

(Question read.) [872]

Q. (By Mr. DeGarmo): Now, I said 1955. Exhibit 3 is only the 1956 agreement. There was an agreement in 1955, wasn't there, with the A.G.C.?

A. Yes, sir.

(Testimony of Arthur A. Rossman.)

Q. All right, just include the '55 and '56 agreements, then. I asked you if there were not men working there under those two agreements?

A. I believe we had some men working for some Corps of Engineers defense installation out there.

Q. You stated, in answer to a question from your counsel this morning, Mr. Rossman, that, to your knowledge, no contractor working at Hanford Works with the Atomic Energy Commission had ever signed the Hanford Works Agreement, which I think is here as Exhibit No. 6. Did you mean by your answer to state that you knew there were none or that you did not know of any?

A. I knew of none after 1952. The negotiating committee signed for all contractors having work on the project.

Q. Well, do you know, as a matter of fact, that there were no contractors—that there was no contractor, who ever actually signed the Hanford Works Agreement?

A. None signed, as far as I am concerned, as far as the Operating Engineers are concerned. They may have signed with the Building Trades Council, I'm not sure of that.

Q. Mr. Rossman, under what contract with Morrison-Knudsen [873] Company were the Operating Engineers employed by it on the Hanford Works Project working during the period January 1, 1956, to March 22nd, 1956?

A. They were working under the terms and conditions of the old Hanford Agreement.

(Testimony of Arthur A. Rossman.)

Q. Well, that was not an agreement with Morrison-Knudsen Company, was it, Mr. Rossman?

A. I assumed it was. They bid the job under the terms of that contract and they were one of the Hanford construction contractors.

Q. Were you familiar with the contract which they had with the Atomic Energy Commission?

A. No, I never saw it until I saw it in the court-house.

Q. Well, you knew that the Hanford Works Agreement itself was terminated on December 31, 1955, did you not?

A. I have a letter that says it was, yes.

Q. Well, now, what written agreement was there, Mr. Rossman, which provided for the payment of health and welfare on the wages of Operating Engineers between January 1, 1956 and March 22, 1956?

A. Well, it was a provision of the Hanford contract. I checked with my health and welfare administrator on Friday, and in 1956 and in 1955 there were over 200, in one case 278, contractors subscribed to the health and welfare plan, and only 45 or 50 of them were members [874] of the A.G.C., if that answers your question.

Q. I don't think it does. I want to know under what written contract, if any, the health and welfare payments were received by the Operating Engineers' health and welfare fund from Morrison-Knudsen Company between the period of January 1 and March 22nd, 1956?

(Testimony of Arthur A. Rossman.)

A. Well, there is a trust instrument entitled the Engineers—A.G.C. and other construction contractors' Health and Welfare Fund. It doesn't just say "A.G.C." Any time a contractor comes into the area and starts work, we furnish him with a copy of that trust fund, monthly report forms, contribution forms, and he is in business.

Q. You also take an agreement from him, do you not, a written agreement, to abide by and pay the payments in accordance with the terms of that agreement?

A. In some cases.

Q. In all cases, do you not? A. No.

Q. Well, let's get back to the question that I asked you: Under what written agreement—I think that is very plain—under what written agreement with Morrison-Knudsen Company were payments made to, and accepted by, the Operating Engineers' Health and Welfare Fund from January 1 to March 22nd, 1956?

A. None that I know of, unless they signed a prior letter [875] of compliance to cover some job in our area. They have had railway work, other work, in our area. I think subsequent to July 1st, 1954, there may conceivably be one in the file. I wouldn't know until I went and checked.

Q. Well, would you check and see if you can find one? You don't need to do it right now, but——

A. I would like to do it right now.

Q. But during this evening I would like to have you check and see if you can find any written agreement with Morrison-Knudsen Company for health

(Testimony of Arthur A. Rossman.)

and welfare. A. Subsequent to July 1st, 1954?

Q. Covering the period January 1 to March 22nd, 1956. There was a provision for health and welfare under the Hanford Works Agreement, was there not? A. That's right.

Q. And it tied right back into the A.G.C. agreement, did it not?

A. I have forgotten the exact language. However, I wrote it. I imagine I would tie that in.

Q. Well, as a matter of fact, there was no health and welfare agreement under the Hanford Works Agreement, was there, except the statement that the contractors would pay health and welfare in accordance with the terms of the agreement which had been negotiated with [876] the A.G.C. Chapters by the Operating Engineers?

A. Well, effective July 1st, 1954, all contractors on the Hanford Project started contributions to the Engineers—A.G.C. Trust Fund, and, to the best of my knowledge, none of them signed to do that, members or non-members of the A.G.C.

Q. Well, Mr. Rossman, as business agent for the Operating Engineers, are you familiar with the fact that there is a criminal penalty for collecting health and welfare benefits without a written agreement with the specific employer making the agreement?

A. I wasn't aware of that.

Q. You never knew of that?

A. I know there is—there is a law against a union collecting health and welfare funds, as such, or an employer. There has to be a trust instrument

(Testimony of Arthur A. Rossman.)

executed and placed on file with the Bureau of Internal Revenue and approved, which has been done in this case.

Q. But you were never aware before that the law required that the agreement be between the employer and the union detailing the terms of payment? A. No.

Q. Under what agreement, Mr. Rossman, did the Operating Engineers receive an increase in pay in the period from January 1 to March 22nd, 1956?

A. By agreement and exchange of letters between Kenneth McCaffree and myself.

Q. An exchange of letters by which you got an increase in pay from Morrison-Knudsen Company?

A. From the Hanford Contractors.

Q. Now, you had negotiated, did you not, an agreement with the Associated General Contractors, Spokane Chapter, Heavy Highway and Engineers, on December 24th of 1955? A. Right.

Q. And that agreement provided for certain specific pay increases, did it not?

A. That's right.

Q. And is it your testimony, Mr. Rossman, that those pay increases which Morrison-Knudsen Company paid to the employees, members of the Operating Engineers, were not paid in accordance with the agreement negotiated in Spokane with the A.G.C.?

A. Well, for many years, the A.G.C. has been recognized as the collective bargaining agent for,

(Testimony of Arthur A. Rossman.)

not only their own members, but also other employers in this area, and their wage rates have been accepted and pre-determined by the Davis-Bacon section of the Labor Department, more than——

Q. Mr. Rossman——

A. ——if I may continue—— [878]

Q. Yes.

A. ——are not the only employers that started paying the increased wage rates on January 1st. All contractors in this area. If they didn't, I was looking them up within a week or ten days.

Q. Mr. Rossman, the contract which was negotiated with the A.G.C. provided that the contract went into effect January 1, 1956, did it not?

A. What was that again?

Q. The contract which was negotiated with the A.G.C., which is Plaintiff's Exhibit 3, provided that it went into effect January 1, 1956, is that correct?

A. That's right.

Q. And is it not a fact that when the wage increases were placed in effect, they were made retroactive and paid back to January 1st of 1956?

A. Yes, as the result of my correspondence with Mr. McCaffree.

Q. Well, just what did Mr. McCaffree have to do with it, now, if you can tell me?

A. I discovered, as I told you a few moments ago, that the contractors on the Hanford Project were not paying the new rates that went into effect on January 1st, 1956, and I wrote him a letter and asked him—he was purportedly representing the

(Testimony of Arthur A. Rossman.)

contractors, all the [879] contractors, on the Hanford Project—and I asked him to notify those contractors to start paying those wage rates.

Q. Did you have any written contract with any contractor on the Hanford Project?

A. None other than the old Hanford Contract, which they were still working under and which they had terminated by letter.

Q. Well, you had no written contract with a single contractor on Hanford Project after January 1, 1956, except the A.G.C. agreements, isn't that true?

A. Didn't have that. I never considered it applied to Hanford.

Q. I understand that.

A. If I had, there wouldn't have been any dispute.

Q. I understand that you never considered it. You were told by Mr. Knack on the morning of January 5th that, as far as the Morrisson-Knudsen Company was concerned, it considered it had a contract with you and with the Teamsters which was effective, isn't that true?

A. In areas outside of the Hanford Project, yes.

Q. No, speaking about Hanford Project only. You weren't discussing anything else at this meeting on the 5th of January except Hanford, were you?

A. I don't remember whether he stated that to me or not. If [880] he did, I can be sure of one thing, I didn't answer in the affirmative that we did have.

Q. Well, as a matter of fact, your answer was this, wasn't it, that you thought you'd better take

(Testimony of Arthur A. Rossman.)

legal counsel as to whether the agreement was effective or not? That was your answer on the morning of January 5th?

A. I don't believe so at that time. That was at a subsequent meeting up in the grand jury room of this building.

Q. Well, you have made that statement on many occasions, have you not, Mr. Rossman?

A. What statement?

Q. That you wished to have legal advice as to whether the A.G.C. contract was effective on the Hanford Project?

A. Yes, and I got it from two different sources.

Q. Yes. I would like to have a statement from you now, Mr. Rossman, as to just on what basis you contend the A.G.C. agreement was not the agreement under which your members were being paid the increase in wages? Was it because of the agreement which you have stated Mr. Knack made in this meeting on January 5th, or was it because of some statement made in the letter by Mr. McCaffree sent on December 29, 1955?

Mr. Etter: There are about three questions [881] there. He asked Mr. Rossman first to make a statement——

Mr. DeGarmo: No——

Mr. Etter: ——then he said he wanted him to answer specifically this one and then specifically another one. Now, I don't know how he could answer all three at once.

(Testimony of Arthur A. Rossman.)

Mr. DeGarmo: If I asked three questions, I will rephrase it.

Mr. Etter: You asked him to make a statement on why he believed——

The Court: I think he is asking whether he claims it is on one or the other.

Mr. DeGarmo: I want to know—I have been trying to find out ever since this trial started—what is their theory.

Q. Are you relying on the statements made by Mr. McCaffree in his letter of December 29th, which terminated the Hanford Works Agreement, or are you relying on the statement which you say Mr. Knack made in the January 5th meeting?

A. Neither one of them.

Q. Neither one of them? A. No.

Q. All right, then, I get back to my first question. What are you relying on? [882]

A. I am relying on statements made by members of the A.G.C. labor committee during negotiations that we weren't talking about Hanford when we were talking about an area agreement.

Q. Thank you. Now we understand each other.

A. I could have told you that the first morning we were here.

* * *

Q. (By Mr. DeGarmo): Mr. Rossman, under what agreement, written agreement, were health and welfare benefits paid by Morrison-Knudsen Company upon the members of your union employed by it on the Hanford Works Project subsequent to the re-

(Testimony of Arthur A. Rossman.)

sumption of work after the work stoppage and until the completion of the work on its project?

Mr. Etter: It seems to me that is [883] repetitive. He has asked Mr. Rossman to see if he can find it. Now, he hasn't left the stand since he asked him to find out about it, so I don't think he can find out any better——

Mr. DeGarmo: It is not repetitive. I asked him previously, restricted it to the period January 1 to March 22nd; I am now asking him as to what agreement it was paid under after they went back to work. It is an entirely different question.

The Court: Oh, I see.

Mr. Etter: All right.

A. Trust instrument. Once an employer makes a contribution, he is obligated to continue to make monthly contributions to the trust fund.

Q. (By Mr. DeGarmo): Do you know of any trust instrument to which Morrison-Knudsen Company is a signer?

A. I don't know whether they are a signer or not, but they have certainly participated in it.

Q. Well, they have made payments, admittedly, yes. A. Yes.

Q. But do you know of any agreement between the Morrison-Knudsen Company and your union providing for such payments other than the A.G.C. agreement, Exhibit 3?

A. No, I don't. As I said, I might check my files and see if there is one there subsequent to July

(Testimony of Arthur A. Rossman.)

1st, 1954, which was the effective date of health and welfare [884] contributions.

Q. Yes. If you will do that, please. If you don't find such an agreement, do you know of any other?

A. No.

Q. Mr. Rossman, I will try and cover this fairly quickly. You attended meetings on the 8th of March, the 10th of March, the 16th of March, and the 21st of March, did you not, with representatives of the Associated General Contractors, Spokane, Heavy Building Chapter?

A. I believe those are the correct dates.

Q. Pardon?

A. I believe those are the correct dates.

Q. Is it a fact that in the meeting of March 8th, which was held with the Pasco-Kennewick Building Trades Council, at which you were present, the statement was made that the A.G.C. agreements were considered as effective on the Hanford Works to A.E.C. work, and that the furnishing of bus transportation and of isolation pay would cease on the 12th of March?

A. Yes, the statement or the threat was made that they were going to remove the isolation pay and the busses.

Q. And as a result of that statement, a meeting was held on March 10th, was it not, at which there were further negotiations?

A. I believe that was in Spokane. [885]

Q. Yes, sir. A. Yes.

Q. And it was at that meeting that the A.G.C.

(Testimony of Arthur A. Rossman.)

Heavy Chapter made the proposal which has been referred to here and identified as Plaintiff's Exhibit—I think Defendants' Exhibit 7? It was at the meeting of March 10th? A. Yes.

Q. And is it a fact, Mr. Rossman, at that meeting the question was asked you as to whether you were willing then to sign it, and you stated you would have to refer it to your membership?

A. That is normal procedure, yes.

Q. And is it also true that at that meeting it was agreed that, in order to give you an opportunity to submit it to your membership, the discontinuance of bus transportation and isolation pay would be postponed from the 12th of March until the 19th of March?

A. Well, that was done. I don't know at whose suggestion or—as I recall it, the time element wouldn't permit me to get an answer in the original time allotted.

Q. Well, you stated that you had a meeting coming on the 14th, did you not; that you wouldn't be able to submit it before the 14th?

A. I think so.

Q. And the time was extended until the 19th, you do remember [886] that, which would be the Monday following?

A. The 19th was on a Monday, was it?

Q. Yes.

A. I don't have the calendar here.

Q. Well, that is the reason I put it in this morn-

(Testimony of Arthur A. Rossman.)

ing, because I thought we might have a question as to dates.

A. I will take your word for it that Monday was the 19th.

Q. Rather small type. If your bifocals are good, you can read it.

A. They are trifocals. March 19th was Monday.

Q. Now, is it a fact, Mr. Rossman, that a subsequent meeting was held on the 16th of March, which was following the meeting at which you stated you would refer the matter to your membership on the 14th, at which you were present?

A. March the 16th would be Friday. I don't recall unless—can you tell me where that meeting was held?

Q. It was held in the Federal Building here in Spokane at the request of the Federal Mediation and Conciliation Service.

A. Yes, I attended that.

Q. And do you recall at that meeting the question was asked as to whether your membership had voted favorably or unfavorably on the proposal which you have in front of you as Defendants' Exhibit 7, to which you replied in [887] the negative?

A. I think that's right.

Q. Was there at that meeting, Mr. Rossman, an offer made by the Associated General Contractors, both chapters, Heavy Highway and Building through Mr. Sather and the Building Chapter through Mr. Helvey, to submit the then disputes to

(Testimony of Arthur A. Rossman.)

the grievance procedure under the Operating Engineers contract, Exhibit 3, the A.G.C. contract?

A. Yes, the offer was made.

Q. And isn't it true that in answer to that, you stated that you were not willing to do that until you first received legal advice as to whether that agreement was binding on the Hanford Project?

A. That's right. Had I agreed to it, I would have been admitting that the agreement was effective, wouldn't I?

Q. Yes, you were not willing to do it because you weren't willing to admit the agreement was effective?

A. That's right.

Q. You wanted to find out first whether some attorney would tell you it was or was not?

A. I am still not willing to agree to that.

Q. And subsequent to that meeting, you took advice of Mr. Etter, who is here as your counsel in this case, did you not?

A. And another attorney, a very prominent one in Spokane, [888] who doesn't happen to be a labor attorney but a corporation counsel.

Q. And at a meeting held on the 21st of March, did you announce your decision to the panel or to the members present who included the two A.G.C. chapters?

A. I believe I rejected arbitration under the terms of the area agreements.

Q. Was not arbitration and grievance procedure also provided under the Hanford Works Agreement, Mr. Rossman?

(Testimony of Arthur A. Rossman.)

A. In different language.

Q. But it was there?

A. I don't believe arbitration was a part of the grievance procedure on the Hanford Contract, as I recall it.

Q. Well, you were insisting that all the terms and provisions of the Hanford Agreement were in effect. Were you also recognizing the grievance and arbitration procedures, if such there be, under the Hanford Works Agreement, or did you just want the good part and leave the bad out?

A. I repeatedly stated that I couldn't agree to any settlement that would provide for a cut in take-home pay for my members employed on that project.

Q. You made that statement repeatedly, didn't you? A. Many times.

Q. That regardless of what the contract said, you weren't going to take any cut in pay? [889]

A. That's right.

Q. That was the ultimate——

A. And, furthermore, during all these disputes and meetings, I never once asked for any increase of anything on the project other than the area rates, which had been customary in that contract for many years.

Q. Well, the rates were specified in the A.G.C. agreement, weren't they, for '56, '57 and '58, were spelled out—— A. Yes.

Q. ——for three years? A. Yes.

Q. Were those the rates you wanted?

A. Yes.

(Testimony of Arthur A. Rossman.)

Q. But you weren't willing to take them under the agreement, you wanted them some other way, your way?

A. My way and the way of some 160 other contractors in the area.

Mr. DeGarmo: I have no further questions.

The Court: Any redirect examination?

Mr. Etter: No.

The Court: Very well, that will be all, Mr. Rossman. Court will take a recess.

(Witness excused.)

(Short recess.) [890]

* * *

ROBERT M. LEWIS

called and sworn as a witness on behalf of the defendants, was examined and testified as follows:

Direct Examination

By Mr. Etter:

Q. Will you state your name, please?

A. Robert M. Lewis.

Q. And what is your present occupation, Bob?

A. Secretary-Treasurer of Teamsters Local 839.

Q. And for how long have you been secretary-treasurer of that local?

A. Approximately one year.

Q. One year. And that would indicate, would it, from shortly after the decease of Mr. Sewell Davis, who occupied that position prior to the time that

(Testimony of Robert M. Lewis.)

you took it over? A. Correct.

Q. And prior to the time that you assumed that position in about May of last year, 1956, were you a member of the Teamsters Local 839? [892]

A. Yes, sir.

Q. And for how long had you been a member of that Local? A. Eight, nine years.

Q. For eight or nine years? A. Uh-huh.

Q. Did you have any other position, such as trustee or otherwise, in the Local up until the time that you succeeded Mr. Davis?

A. I was chief steward of the local for several years, and the first Monday of March in 1956, I assumed the responsibility of business agent for Local 839.

Q. The first of March of 1956?

A. The first Monday in March. I believe it was the 4th.

Q. Would you tell me, Mr. Lewis, whether or not you participated in any of the negotiations in 1955 with the Hanford Contractors Negotiating Committee? A. In 1955?

Q. Yes. A. No, sir.

Q. And did you participate in any of the discussions with the Hanford Contractors Negotiating Committee in 1956? A. One meeting, sir.

Q. One meeting. Do you recall when that was, Bob? A. March the 8th.

Q. March the 8th. And at that time, as has been testified, [893] the bargaining rights, whatever they may have been, of the Hanford Contractors Nego-

(Testimony of Robert M. Lewis.)

tiating Committee were assigned, were they not, supposedly, to the A.G.C. local chapter?

A. At the conclusion of the meeting, yes.

Q. You were so advised?

A. You were so advised at the time after a caucus. We had been in discussion on a proposal that had been presented to us prior to a caucus, came back in, and they advised us they were turning over the bargaining rights to A.G.C.

Q. Now, do you recall that on or about March the 2nd your local received a proposal from the Hanford contractors Negotiating Committee?

A. (No response.)

The Clerk: Defendants' 15.

Q. (By Mr. Etter): First, without disclosing any of the contents, I will ask you to examine this and tell me if you recognize it? It is the Defendants' Exhibit 15 for identification.

A. Yes, I am familiar with this document.

Q. Did you receive a proposal then on March the 2nd of 1956?

A. The first time I saw it would have been the 4th or 5th [894] of March.

Q. The 4th or 5th of March? A. Uh-huh.

Q. This was in the official files, however?

A. Yes, sir.

Q. And you are acquainted, are you, with Mr. McCaffree's signature?

A. I have seen it several times.

Q. You have. All right.

Mr. Etter: Move at this time, your Honor, that

(Testimony of Robert M. Lewis.)

Exhibit 15 for identification be admitted in evidence.

Mr. DeGarmo: I wish to show the objection to it upon all of the grounds which have been stated with respect to Exhibits 12 and 13. There has been no showing whatever that anyone connected with this particular document had any connection with or authority to represent the plaintiff in this action or to make any proposal in its behalf and is contrary to the terms of a written agreement which exists between the parties.

The Court: The record will show the objection. It will be admitted. 15?

The Clerk: 15.

(Whereupon, the said document was admitted in evidence as Defendants' Exhibit No. 15.) [895]

Q. (By Mr. Etter): Oh, by the way, do you know, and can you tell me if you know, whether or not your local acted on this proposal?

A. My understanding is that they did act on it and the scale was put into effect.

Q. This scale was put into effect.

The Clerk: I have marked the Defendants' 16, your Honor.

Mr. Etter: Now, Mr. DeGarmo, this is just an original of the letter which you have attached on your requests for admissions and I want to put it in as an exhibit so we can refer to it as an exhibit and not constantly have to refer to the attachment to the request for admissions.

(Testimony of Robert M. Lewis.)

Q. And this is a letter which your Local received and which was in your files from Mr. McCaffree?

The Court: Is that the cancellation letter?

Mr. Etter: That's right, your Honor, and I want to put it in as an exhibit.

The Court: No objection, I assume?

Mr. DeGarmo: None whatever.

The Court: It will be admitted.

The Clerk: That is 16, your Honor.

(Whereupon, the said document was admitted in evidence as Defendants' Exhibit [896] No. 16.)

Q. (By Mr. Etter): Now, did you have an opportunity or were you in the Hanford Works Area, in the area where Morrison-Knudsen was working on this contract, in December of 1955?

A. Yes, sir.

Q. Do you know whether or not of your own knowledge there were Teamsters, members of Local 839, that were working on that project?

A. Yes, there were.

Q. And did you see them there?

A. Yes, I did, sir.

Q. And can you tell me, too, whether you were on that project personally in January of 1956?

A. I was.

Q. And having to do with the excavation work pursuant to the A.E.C. contract that Morrison-Knudsen was working on there?

A. I witnessed some of the work, yes, sir.

(Testimony of Robert M. Lewis.)

Q. In 1956? A. Yes, sir.

Q. Members and Teamsters of your Local?

A. Correct.

Mr. Etter: That is all. [897]

Cross-Examination

By Mr. DeGarmo:

Q. Mr. Lewis, you stated, in response to a question from counsel, that it was your understanding that the union accepted the proposal as set out in Defendants' Exhibit 15. Were you present at the meeting yourself or were you just stating something that had come to you from someone else?

A. It was several meetings about the Hanford situation and it was agreed on by the membership present at one meeting that I was in attendance at that we would agree to accept the wage scales as proposed and continue negotiating for the isolation pay and travel.

Q. Now, you were at that time, were you not, Mr. Lewis, and I am referring to the date of this document, March 2nd, 1956, dealing exclusively with the Hanford Contractors Negotiating Committee?

A. To my knowledge, yes. I was only business representative.

Q. Were you familiar in March of 1956, Mr. Lewis, with the document which I am handing you as Plaintiff's Exhibit 2, being the contract between the Associated General Contractors on behalf of its members and the Teamsters Union? [898]

A. Well, not as familiar as I am now, sir.

(Testimony of Robert M. Lewis.)

Q. Well, I would like to ask you, in view of your present familiarity, perhaps, whether, the wage scales which are set out in the letter. Defendants' Exhibit 15, for the various members of the Teamsters craft are the same wage scales which were negotiated and which are set forth in the agreement, Plaintiff's Exhibit 2?

A. Do you have reference for the same period of time, sir?

Q. I am talking about the year 1956, as of March 2nd, 1956.

A. Without comparing all of them, they appear to be the same.

Q. I am calling your attention specifically to Article 10, Schedule A of Plaintiff's Exhibit 2——

A. Uh-huh.

Q. ——which sets out the scales which were made a part of the contract, and these wages scales that are referred to in Article 10, Schedule A, as I understand it, at least from your cursory examination on that, appear to be the same as those which are set forth in this letter of March 2nd which Mr. McCaffree sent? A. Correct.

Q. So that as far as the Morrison-Knudsen Company was concerned, assuming, and I am not asking you to bind anybody, but assuming that Morrison-Knudsen Company and the Teamsters had an agreement, Plaintiff's Exhibit 2, [899] they did nothing other than to follow the agreement which is Plaintiff's Exhibit 2 when they put into effect the wage scales which are set out on Defendants' Exhibit 15?

(Testimony of Robert M. Lewis.)

A. Only the extent of the agreement that covers the rate per hour, to my knowledge.

Q. Well, there is nothing in this except as it relates to rates and classifications?

A. I believe in the letter they make reference to being subject to further negotiation, sir.

Q. Yes, but there is nothing in this letter, Defendants' Exhibit 15, about bus transportation or isolation pay or any other matters which were an area of dispute?

A. I believe not, Mr. DeGarmo.

Q. You have stated that you became business agent for the Teamsters Union on the first Monday in March, I believe you said, of 1956. Now, are you positive that you attended just one meeting with the Associated General Contractors' representatives after that date?

A. For how long a period of time?

Q. Well, from March 1st until March 22nd, inclusive?

A. In the A.G.C., I only attended one meeting.

Q. Well, that was as I understood it, and you stated that that meeting was on March 8th?

A. I believe the question, sir, was in regards to the [900] meetings that was held with the Hanford Contractors, and I stated I attended one meeting on March the 8th.

Q. Oh, that was the Hanford Contractors?

A. That is correct.

Q. And that was the meeting of March 8th?

A. Yes, sir.

(Testimony of Robert M. Lewis.)

Q. Now, did you attend the meeting on March 10th with the Associated General Contractors here in Spokane?

A. I attended the meeting on March the 10th in Spokane for representatives of several of the contractors at Hanford, as well as some of the representatives from the Associated General Contractors was present, along with some representatives, I believe, from the Atomic Energy Commission.

Q. Yes. Mr. Sewell Davis was also in attendance at that meeting, was he not? A. Yes, sir.

Q. Do you recall at the meeting which was held on March 8th, which you stated was the Hanford Contractors Negotiating Committee meeting, that in addition to the statement that the bargaining rights had been assigned to the Associated General Contractors, the statement was further made that, effective March 12th, the A.G.C. agreements would be considered as effective on all work at the Hanford Project? [901]

A. Not in those exact words, sir.

Q. Can you tell me what the exact words were, if you remember?

A. When we went into the meeting, we had a proposal from the Hanford Contractors Committee. As I recall, one of the conditions of the proposal was that the A.G.C. agreement would apply on the 12th. That was one of the propositions that they made to us and, after discussion and their proposal was turned down, why, as I mentioned earlier in the earlier testimony, we had a caucus at their request—

(Testimony of Robert M. Lewis.)

speaking of "they," I am talking about the Hanford Committee—we came back in after the caucus and they so advised Mr. Davis, Ernie Roberts was also present from the Teamsters, and myself, of the fact that they were turning over their bargaining rights to the A.G.C.

I do not recall them stating that on Monday, the 12th, that they was going to take the busses off, no.

Q. Was the matter of isolation pay mentioned?

A. Well, it was mentioned all afternoon, but now as to whether or not they stated that they was going to stop paying isolation pay on Monday, I don't remember, sir.

Q. Are you familiar with the fact, Mr. Lewis, that the furnishing of bus transportation has never been a [902] contractual obligation at the Hanford Project?

A. You are speaking as far as construction is concerned?

Q. Yes, sir.

A. I have been told that it never has. I don't know personally, no.

Q. You have never personally examined any of the contracts?

A. I have looked at some of them, but I haven't looked at those details, because a lot of times you have addendums to your agreement that doesn't appear in the body, and I worked on the project in early construction and it was furnished at that time. Under what agreement it was furnished under, **I don't** know.

(Testimony of Robert M. Lewis.)

Q. I see. Mr. Lewis, by the way, is this Local 839 under trusteeship of either the Joint Council or the Western Conference?

Mr. Carey: I didn't understand that question. Will you read it, please?

Mr. DeGarmo: I asked if the Local 839 was under trusteeship of either the Joint Council or the Western Conference at the time that these negotiations were being carried on.

Mr. Carey: It is immaterial.

Mr. Etter: Of course, I would object to it as being immaterial. I don't know what relationship it bears to any issue. [903]

Mr. Carey: Whether it is under trusteeship or not, it is still the Joint Council—or it is still the Local.

The Court: Yes.

Mr. Carey: Not the Joint Council or the Western Conference.

Mr. DeGarmo: I appreciate that, but it makes a difference in the capacity in which this man is acting.

The Court: Well, I will overrule the objection.

Q. (By Mr. DeGarmo): Can you answer the question? A. As to whether or not——

Q. I am talking about the period now, let's say, from October of 1955, until March 22nd of 1956.

A. As to whether or not it was under trusteeship of the Joint Council or Western Conference?

Q. Yes.

A. The answer to that would be no.

(Testimony of Robert M. Lewis.)

Q. Well, is it under trusteeship?

A. Yes.

Q. Well, whose trusteeship?

A. If I understand it correctly, why, it would be under International's trusteeship.

Q. Then, were you elected by the membership, or were you elected as secretary-treasurer—I think you said you were chief steward and then you were secretary-treasurer— [904] were you elected by the membership or were you selected by some organization?

A. As secretary-treasurer I was appointed to fill a vacancy.

Q. By whom? A. John Sweeney.

Q. And who is Mr. John Sweeney?

A. At that time, he was a representative. I don't know the exact title. He is deceased at the present time and I don't know how far up the ladder his authority reached, but he was the one that appointed me and at that time he was serving in some capacity of the Western Conference, but I don't know on whose authority that he acted.

Q. Well, how about when you were selected as business agent, was that by the membership or was that also by some other organization?

A. That was by appointment.

Q. And who appointed you to that position?

A. Mr. Sewell Davis, with the concurrence of the executive board.

Q. It was not by election, in any event?

(Testimony of Robert M. Lewis.)

A. No, sir.

Q. Did you replace Mr. Davis, or what was Mr. Davis' position and what was your position? That is what I am [905] trying to get straight.

A. What period of time?

Q. Well, on the first Monday in March, 1956, let's fix that as an exact day.

A. As I stated earlier, I was business representative on that day and he was secretary-treasurer on that day. I succeeded him as secretary-treasurer in the latter part of May or the first week in June. I don't know when the final payment came through.

Q. And did Mr. Davis remain merely as secretary-treasurer until the time of his death?

A. Yes, sir.

Q. And you were business agent or representative?
A. Right.

Q. All right. Now, as business agent of the Teamsters Local 839, will you state under what written agreement, if any, with Morrison-Knudsen Company the members of Local Union 839 were working for Morrison-Knudsen Company on the Hanford Project between the dates of January 1st, 1956, and March 22nd, 1956?

A. Well, sir, I couldn't answer that question. Coming into the job in the first Monday in March, all this breaking so suddenly, a lot of that that I wasn't familiar with at that time and I am still not familiar with. [906]

Q. Well, you mean as business agent, you still

(Testimony of Robert M. Lewis.)

don't know under what agreement, if any, they were working at that time?

A. I wouldn't know what agreement might have been reached between Mr. Davis and other parties.

Q. I am asking about written agreements now.

A. I have not seen any, no, sir.

Q. Well, as business agent would you have access to such agreements if there were any?

A. Yes, sir, normally.

Q. And have you looked to see if you could find any written agreement between Morrison-Knudsen Company and Teamsters Local 839 other than the Plaintiff's Exhibit 2, which you had before you previously?

A. Well, I have found old agreements between Morrison-Knudsen and the Teamsters Local to that area.

Q. I am talking about the period January 1st, 1956, to March 22nd?

A. I have never seen any, no, sir.

Q. And what about the period from the date of resumption of work after the work stoppage on or about June 5th, 1956, until the Morrison-Knudsen Company completed its work on the Hanford Works Project, under what agreement was the Morrison-Knudsen Company, written agreement between Morrison-Knudsen Company, and the Teamsters [907] Local 839 was there, to your knowledge?

A. The only agreement that I know of was working under status quo conditions, which was agreed to by both sides, I believe.

(Testimony of Robert M. Lewis.)

Q. Was that a written agreement?

A. I don't know the communications that was held in regards to the panel on it. It was agreeable to both sides of the dispute that we would work status quo, and we are still working that way.

Q. And do you know of any agreement other than this so-called status quo than the Plaintiff's Exhibit 2?

A. I believe that I answered you, sir, that I had not seen any.

Q. Were you aware, Mr. Lewis, of the penalty provisions of the Taft-Hartley Act to which I referred in cross-examination of Mr. Rossman concerning the acceptance of health and welfare payments by a union or its representative from an employer in the absence of a written agreement specifying the details of the payment?

A. No, not as such, no, I didn't. We don't accept them, I mean the payments do not come in to our Local, and it is handled by a trust fund and I am not familiar with all the details.

Q. Well, that is a trust fund upon which your organization has representatives, is it not? [908]

A. That is correct, I believe it is an equal number with the contractors and the union, I believe, sir.

Mr. DeGarmo: I have no further questions.

Mr. Etter: That is all. Call Mr. Clary.

(Witness excused.)

HAROLD EDWARD CLARY

called and sworn as a witness on behalf of the defendants, was examined and testified as follows:

Direct Examination

By Mr. Etter:

Q. Will you state your name, please?

A. Harold Edward Clary.

Q. Where do you live, Mr. Clary?

A. I live in Benton City, Washington.

Q. Benton City, Washington. Is that close to Richland, Kennewick and Pasco?

A. About a half hour's driving distance.

Q. I see. And how long have you lived at Benton City, Mr. Clary?

A. Off and on since 1947.

Q. Off and on since 1947. Have you lived in that general area since that time?

A. I have lived in that general area since 1944.

Q. Since 1944? [909] A. Uh-huh.

Q. What is your present official capacity, if you have one? A. I am at present unattached.

Q. You are unattached. And what has been your occupation or trade?

A. My business has been business representative. I have since March 15, 1948. Prior to that, president of Painters Local Union 427 from February 25th, 1954.

Q. Until what date?

A. Until December 7th, 1956.

Q. Until December 7th of 1956?

A. Uh-huh.

(Testimony of Harold Edward Clary.)

Q. Is that correct? A. Yes, sir.

Q. And that Local comprises men in the painting craft from what area, will you tell me?

A. Local Union 427 comprises painters, tapers, linoleum layers and glaziers.

Q. And from what area?

A. Our jurisdiction comprises the entire Benton County.

Q. All of Benton County? A. Uh-huh.

Q. Was your organization in 1956, on January the 1st, affiliated with the Building Trades Council of Pasco [910] and Kennewick? A. We were.

Q. Were you on January the 5th of 1956?

A. We were.

Q. Were you in attendance at a meeting at the Labor Hall at Pasco, Washington, on the afternoon of January the 5th, 1956? A. I was.

Q. And how did you happen to be there?

A. We were advised that the Morrison-Knudsen people were meeting with the executive board members of the building trades for a pre-job conference so that we could continue the cordial relationship that we anticipated would exist throughout their job.

Q. And do you know how many representatives were there from unions?

A. My estimate would have to concur with the testimony which has already been given, possibly 14 or 15 men.

Q. And you remember that Mr. Knack was there? A. I do.

(Testimony of Harold Edward Clary.)

Q. And Mr. Reed? A. I do.

Q. Now can you tell us just briefly what the discussion was at the time, what the conference concerned?

A. Well, the conference concerned the existing conditions [911] at the Hanford Works, the numbers of men that they contemplated using, and the approximate scheduling of the hiring of the men.

Q. I see. And do you recall that there was any conversation at that time that had to do with the existing conditions on the Hanford Works Project as they related to conditions and pay?

A. Toward the completion of the meeting or the adjournment of the meeting, Mr. Knapp and Mr. Knack conferred relative to the conditions that they bid the job, and so forth, and I believe the conversation ensued and Mr. Knack stated that he wasn't interested in local politics, they were there to do a job, had bid it to do it, and were there to carry out the assignment to the best of their ability.

Q. Was anything said with regard to isolation pay and bus transportation?

A. That was the gist of the conversation at the adjournment of the meeting.

Q. Well, do you recall what was said about it? If you can, I wish you would tell us in substance what Mr. Knapp might have said to Mr. Knack and what he said in return, if anything, and so forth.

A. That they weren't desirous of upsetting anything or establishing any precedent. [912]

Q. Who said that? A. Mr. Knack.

(Testimony of Harold Edward Clary.)

Q. And was there any further conversation that you heard, about it?

A. There was something further, but I didn't hear the balance of the conversation.

Q. And are you referring now to a conversation that concerned the transportation and isolation pay?

A. Yes, sir.

Q. You are.

Mr. Etter: That is all.

Mr. DeGarmo: No questions.

Mr. Etter: All right. Mr. King.

(Witness excused.)

LAWRENCE R. KING

called and sworn as a witness on behalf of the defendants, was examined and testified as follows:

Direct Examination

By Mr. Etter:

Q. You are Lawrence King? A. Yes.

Q. Larry, called Larry most of the time?

A. Yes.

Q. Where do you live, Mr. King? [913]

A. In Kennewick, Washington.

Q. And with your family? A. Yes.

Q. And how long have you lived in Kennewick?

A. About five and a half years.

Q. About five and a half years? A. Yes.

Q. And what is your present trade or occupation?

(Testimony of Lawrence R. King.)

A. I am employed as a business representative and financial secretary of Millwrights and Machinery Erectors, Local Union 1699.

Q. Millwrights and what was that?

A. Machinery Erectors, Local Union 1699.

Q. And how long have you held that position, Larry? A. Five years.

Q. Five years. And were you such business agent and representative of the Millwrights Local in January, 1956? A. Yes.

Q. And were you on January 5th of 1956?

A. Yes.

Q. Did you have occasion to attend the meeting at the Labor Hall in Pasco on the afternoon of January the 5th of 1956? A. I did. [914]

Q. And can you tell me, as you recall it, who was represented or who was present, by name, if you can remember?

A. Well, there were several of the union representatives present. Other than myself, Mr. Clary, Mr. Knapp, Mr. Rossman. I remember them particularly. There was representatives of the Morrison-Knudsen Company, Mr. Lee Knack and Mr. Ray Reed. I remember them.

Q. Anybody else you can remember?

A. Well, not specifically.

Q. Mr. Dunn was chairman of the meeting?

A. Yes, Mr. Dunn was there, Mr. Brown of the Carpenters was there.

Q. I see. Now, how did you happen to be in at-

(Testimony of Lawrence R. King.)

tendance at the meeting? Can you tell us what circumstances?

A. As a member of the Building Trades, I was notified that that meeting would be held with the Morrison-Knudsen Company, which was considered a pre-job conference.

Q. I see. And your Millwrights Local is a member of and associated with the Pasco-Kennewick Building Trades Council? A. Yes, they are.

Q. And you went to the meeting pursuant to the notice or advice you had received? A. Yes.

Q. Did you have any particular interest in that pre-job [915] conference so far as Morrison-Knudsen was concerned?

A. Well, yes, we have an interest in any pre-job conference that pertains to our work, our conditions that we will be working under.

Q. I see.

A. And work we will be doing.

Q. Now, do you recall any conversation that occurred at that time with respect to the existing Hanford Agreement as it related to isolation pay and bus transportation? A. Yes.

Q. And will you tell us what was said, as you recall it?

A. Well, it was toward the later part of the meeting about to adjourn, and Mr. Knapp asked of Morrison-Knudsen Company what their position was going to be on bus transportation and isolation pay. Mr. Knack answered for the Morrison-Knudsen Company to the effect that they weren't there to

(Testimony of Lawrence R. King.)

disrupt anything that had been going on and that he would continue to pay it and furnish transportation.

Q. Did you have any particular interest in that subject at that time?

A. Yes, we were very much interested in it.

Q. I see.

Mr. Etter: That is all. [916]

Cross-Examination

By Mr. DeGarmo:

Q. Mr. King, was that the only thing that Mr. Knack said at this meeting? Have you given us all of the conversation now?

A. No, he had discussed——

Q. I mean, on this particular subject, was that the full statement that he made in answer to Mr. Knapp's question so far as you can recall?

A. That was the pertinent facts of it.

Q. Well, that wasn't the question I asked you. The question I asked you, was that all that he said as far as you can remember?

A. Well, that part of it I definitely remember, yes.

Q. Well, can you remember that he said anything else? A. No, not particularly.

Q. All right. And what you say he said was to the effect that they were not there to disrupt anything and that they were going to do what?

A. They were going to continue to pay—furnish transportation and furnish, or rather pay the isolation pay. That is what they had bid the job.

(Testimony of Lawrence R. King.)

Q. That was what?

A. That is the way they had bid the job. [917]

Q. Well, now, you didn't tell us that the first time, did you? A. No, I didn't.

Q. Well, now, do you recall anything else? I want to give you full opportunity to tell us everything that he said.

A. Not at the present, I don't.

Q. I assume that you have discussed the statement which he made at that meeting with Mr. Rossman and with Mr. Lewis and with Mr. Dunn and with Mr. Clary, is that correct?

A. I think it has been pretty much limited to discussion with Bill Dunn. He called me on the phone and asked me if I recalled the meeting and what was said, and I repeated, I wouldn't say exactly word for word, but very close to what I have just said. That was a week or two ago.

Q. Has your memory been refreshed at all by anything that has taken place in this courtroom?

A. Not on that particular meeting, I don't think so, not much more.

Q. You have sat here throughout this trial, have you not?

A. Yes—not all of it, but most of it.

Q. Well, how much of it were you not here?

A. One day, Thursday.

Q. Other than Thursday, you have been here continuously? [918] A. Yes.

Q. Now, Mr. King, I would like to have you tell us what else you can remember that Mr. Knack said

(Testimony of Lawrence R. King.)

upon any other subject at this meeting on the 5th of January, 1956.

A. Well, I couldn't give you the figures, but he did relate to us the amount of work that his company was doing in foreign countries. He talked about a job in Missouri, I believe it was, the troubles that they had there. I remember he introduced Mr. Ray Reed at that time. I think that was the first time I met him. He pointed out that Mr. Reed was the boss on that job, not to go over his head, to go to him and he would take care of it, and not to come to Mr. Knack. Those things I remember, also.

Q. Anything else? This meeting lasted about three hours, now, two hours and a half.

A. Well, there was a lot of conversations at those type of meetings that I might not have been particularly interested in, not affecting the union I represented.

Q. Well, would the matter of jurisdictional disputes have any significance to you as business agent of the Millwrights? A. Yes, it would.

Q. Did he say anything about jurisdictional disputes? [919] A. Yes, he did.

Q. What did he say?

A. Well, verbatim, I don't know what his words were, but they were hoping to have harmonious relationships.

Normally, at pre-job conferences the jurisdictional disputes are not taken up in detail, they are not settled at pre-job conferences.

Q. Well, can you remember anything else that he

(Testimony of Lawrence R. King.)

said about jurisdictional disputes at this two hour, two hour and a half, meeting?

A. Not particularly.

Q. Do you remember any other subject that was made a specific item of discussion?

A. I can't think of any right now.

Q. But you can remember that at the tail end of the meeting Mr. Knapp made a statement and that Mr. Knack gave the precise answer that you have given here?

A. Yes, in about that language, yes, I remember.

Q. Which included that they had bid the job on that basis? You are sure of that, now?

A. Yes, I am.

Q. Now, you didn't tell us that the first time, did you? A. No.

Q. But you are sure of that now?

A. Yes. [920]

Q. There is no question in your mind?

A. No.

Q. You didn't just think of that because somebody else has testified to that? A. No.

Q. All right. Well, now, as a matter of fact your union was interested in bus transportation and isolation pay, too, wasn't it?

A. That is what I said, yes, we were.

Q. And you hadn't signed any separate area agreement at that time, had you?

A. No. We were in negotiations at that time.

Q. Was Mr. Knapp speaking for you?

A. No.

(Testimony of Lawrence R. King.)

Q. Had you authorized him to speak for you at this meeting? A. No.

Q. Did you ask any question on the subject?

A. No.

Q. You didn't ask whether this statement that Mr. Knack made also covered the Millwrights?

A. No.

Q. You knew Mr. Knapp quite well at that time, did you not? A. Yes.

Q. And you know that he was the business agent for the Cement Finishers? [921]

A. Yes.

Q. Did you know anything else about him other than that, as to who he was representing at this meeting? A. No.

Mr. DeGarmo: I have no further questions.

Redirect Examination

By Mr. Etter:

Q. Did you assume that the answers that Mr. Knack made applied to the unions generally?

Mr. DeGarmo: Just a minute, if your Honor please. I object upon the ground that assumption is inadmissible.

The Court: Well, I will sustain the objection.

Mr. Etter: That is all.

(Witness excused.)

That is all of our testimony, your Honor.

Now, I made copies, your Honor, of the amendment and I have handed Mr. DeGarmo the copy of

one I read the other day, and it has been suggested, and I think a good suggestion, that I file this copy so it will be in the record. Mr. Oden may have it if he wishes.

The Court: All right.

Mr. Etter: There is one other thing, your Honor. The affirmative defense, as I gathered, was [922] stricken and this amendment was allowed, but it was not allowed along with the reinstatement of the affirmative defense, which is still stricken, I understand correctly, do I?

Mr. DeGarmo: Well, I hope you do. I thought that was the ruling.

Mr. Etter: Well, I just want to make sure.

The Court: Yes, that was my understanding.

Mr. Etter: Beg pardon?

The Court: Yes, that was my [923] understanding.

* * *

Court will adjourn until tomorrow morning at 10 o'clock.

(Whereupon, the trial in the instant cause was adjourned until 10 o'clock a.m. Tuesday, June 18, 1957.) [955]

10 o'Clock A.M.—Tuesday, June 18, 1957

(Whereupon, the trial in the instant cause was resumed pursuant to adjournment, all persons being present as before, and the following proceedings were had:) [957]

* * *

ARTHUR A. ROSSMAN

having previously been sworn, resumed the stand and testified further as follows:

Cross-Examination
(Continued)

By Mr. DeGarmo:

Q. Mr. Rossman, during the course of your cross-examination yesterday, I asked certain questions of you relating to any written agreement between Morrison-Knudsen Company and the Operating Engineers Local No. 370 with reference to the payment of health and welfare upon employees employed at the Hanford Works Project. Have you made a search to determine whether you have any such written agreements?

A. I didn't understand your question to refer exclusively to the Hanford Project. I understood——

Q. Well, do you have any agreements that would cover employees working at the Hanford Project, written [958] agreements?

A. I have four, four agreements, signed by representatives of Morrison-Knudsen, providing for health and welfare within the territory of this agreement, none specifically pinning down Hanford.

Q. When you refer to this agreement, you refer to Exhibit 3, plaintiff's Exhibit 3, the A.G.C. agreement?

A. Two of them tie into that, yes. No, not Exhibit 3, the prior agreement, prior to the 1956 agreement.

(Testimony of Arthur A. Rossman.)

Q. Yes. Well, before I ask you about those agreements, is it your position that the agreements which you have provide for health and welfare payments upon employees at the Hanford Project?

A. The Exhibit 3 that is here——

Q. No, the question is whether the agreements which you have produced are agreements which you contend provide for health and welfare payments upon employees of Morrison-Knudsen who were employed at the Hanford Project under the contract, Exhibit 1? A. Yes.

Q. All right. Now, will you produce those agreements that you say——

A. If a contractor has two or three jobs in an area under our jurisdiction and contributes health and welfare and agrees to on one contract, I assume that he does on all [959] of them. Let me answer it that way, we wouldn't exclude one specific job.

Q. Well, let's see the agreements that you are referring to and perhaps they will give us the answer to the question that I am asking.

A. This first one is the Morrison-Knudsen sponsored contract, Columbia River Constructors, on the Chief Joseph Dam.

Q. Is it signed by Morrison-Knudsen Company?

A. By their representative, George Piedmont.

Q. Well, is it signed by each of the members of the joint venture or by the joint venture?

A. By each of the members—no, by just George Piedmont.

(Testimony of Arthur A. Rossman.)

Q. Let me see the agreement that you are referring to. A. (Witness complies.)

Q. Well, the agreement that you are showing me—I don't wish to take papers from your fist, although I may have to—the agreement which you are showing me, Mr. Rossman, is one that is signed by Columbia River Constructors, George Piedmont, isn't it? A. That's right.

Q. There is nothing there that states that it is Morrison-Knudsen Company?

A. No; however, Morrison-Knudsen was the sponsoring contractor of that joint venture. [960]

Q. Well, do you know who the joint venturers were who were Columbia River Constructors?

A. Yes, I believe there were ten of them.

Q. Yes, and Mr. Piedmont just happened to be one of the members of the joint venture?

A. He was an M-K man, as was all supervision on that project.

Q. But this was not Morrison-Knudsen Company which has signed this agreement, is it?

A. Not in the strict sense, no.

Q. No. And that related to Chief Joseph Dam power house, did it not? A. Right.

Q. And it didn't relate to Hanford Works at all; the Columbia River Constructors did not have any work at Hanford Works? A. No.

Q. All right. Now, let's see if you have any other contracts that are signed by Morrison-Knudsen Company relating to Hanford Works?

A. Here is one that covers a Morrison-Knudsen

(Testimony of Arthur A. Rossman.)

shop at Yardley, Washington, which provides for health and welfare contributions, and those men, while they are primarily employed in the shop, they go out on jobs and it is conceivable that some of them may have gone [961] to Hanford.

Q. Well, was this particular project that this agreement was written on for work within the Hanford Works Project?

A. Not specifically, no.

Q. Well, specifically, it wasn't, isn't that true? It was on a particular job?

A. Well——

Q. May I see the agreement?

A. Yes. I would like to read you one clause:

“It is mutually agreed that when men employed in this shop are required to transfer their activities to the site of construction jobs for their employer, their wages and working conditions shall be governed by the Highway and Heavy Construction Agreements effective in the area at the time.”

And they do that frequently, go out of the shop.

Q. Is it your position now that the A.G.C agreement, Exhibit 3, was the agreement in force and effect at Hanford Works, Mr. Rossman?

A. No.

Q. Well, then, what relevancy does the language that you read to me have to the issue that is now before the Court? [962]

A. This is not an A.G.C. agreement either, that is strictly a Morrison-Knudsen agreement.

Q. I know, the shop agreement that you are referring to.

A. That's right.

(Testimony of Arthur A. Rossman.)

Q. It says they shall be covered by the Highway and Heavy Construction Agreement in effect in the area at the time. Now, the only Heavy and Highway Construction Agreement is an A.G.C. agreement, isn't it?

A. With the exception of Hanford.

Q. Yes, with the exception of Hanford.

A. Yes.

Q. Hanford Works Agreement? A. Yes.

Q. This agreement states that it covers the employment of members of the union employed in the repair, maintenance, welding, and servicing of construction equipment owned by or under lease to the employer in the employer's shop at Yardley, Washington.

Now, you don't contend, do you, Mr. Rossman, that that is an agreement which covered the employees of Morrison-Knudsen Company at Hanford Works, do you?

A. Not unless they went down there, some of them went down there to repair equipment on the job, which they do occasionally.

The Court: Where is Yardley? [963]

A. Just out of Spokane in the Spokane Valley.

The Court: Near Spokane? A. Yes.

Q. (By Mr. DeGarmo): Do you have any other agreements that you want to tell us about now that you contend cover employees of Morrison-Knudsen Company on the Hanford Works Project?

A. As I recall your questioning yesterday, you asked me if there were any contracts covering Han-

(Testimony of Arthur A. Rossman.)

ford, and I said no, and you asked me if there were any other contracts providing for health and welfare signed by Morrison-Knudsen, and I said I didn't know and I would check, and that is why I brought these.

Q. Well, I think, Mr. Rossman, you may have misunderstood me. I believe the record is clear that I was asking you specifically about the Hanford Works.

A. I think I answered "no" to that question.

Q. Yes, and you still say "no" to that question?

A. That's right.

Q. Without reading from them, neither of these last two documents that you have handed me purport to cover Hanford Works?

A. One of them is Box Canyon Dam and the other one is the Morrison-Knudsen job at Mesa, which is right adjacent to the Hanford [964] Project.

Q. Yes.

Mr. DeGarmo: I have no further questions.

Redirect Examination

(Continued)

By Mr. Etter:

Q. Well, is it the fact or is it not, Mr. Rossman, that health and welfare contributions are required everywhere in the area from all contractors regardless of an existing A.G.C. agreement?

A. That's right. We don't furnish men to an em-

(Testimony of Arthur A. Rossman.)

ployer unless he contributes to the health and welfare fund.

Q. And health and welfare, the commencement of payments to employees in the Hanford Project started in 1954, did it not?

A. That's right.

Q. And it has continued from 1954 through 1955 and up until the present?

A. They are still being paid.

Q. And even though at that time and at the time of the payment of health and welfare on the project, the contractors were providing bus transportation and isolation pay at the same time?

A. That's right, continuously before 1954 in those two instances and beginning July 1st, 1954, in the case of the health and welfare. [965]

Mr. Etter: Yes, that is all.

Mr. DeGarmo: That isn't all?

Mr. Etter: Well, one minute more.

Mr. DeGarmo: Yes.

Q. (By Mr. Etter): Is it or is it not the fact that there are many other contractors, independent and otherwise, who are not members of A.G.C. or signatory who also pay health and welfare on work performed within this area? A. Yes.

Mr. DeGarmo: Just a minute, Mr. Rossman.

The Court: Just a moment.

The Witness: Sorry.

Mr. DeGarmo: I object to the question on the ground that it is leading. Counsel has asked about half a dozen now that have great conclusions in

(Testimony of Arthur A. Rossman.)

them and from which Mr. Rossman could say "Yes." I think Mr. Rossman should be permitted to testify as to what he knows of his own knowledge.

The Court: Well, I think the last question was leading. It seems to be a common erroneous notion among lawyers that an attorney may lead on re-direct, but it is always a temptation to do that.

Mr. Etter: That is all as far as I am [966] concerned.

Recross-Examination

By Mr. DeGarmo:

Q. Well, now, I have a few questions in view of the statement Mr. Etter made to which you answered "Yes."

You say that all employers on the Hanford Works Project have paid health and welfare; is that your testimony? A. Yes.

Q. Do you know why they have paid health and welfare, Mr. Rossman, under what agreement?

A. By virtue of being represented by the Hanford Contractors Negotiating Committee, who agreed to health and welfare contributions.

Q. Well, now, that was paid under the Hanford Works Agreement, was it not, Mr. Rossman?

A. Yes.

Q. Was it paid for any other reason than the Hanford Works Agreement, to your knowledge?

A. Well, the health and welfare language was taken from the A.G.C. agreement and placed in the

(Testimony of Arthur A. Rossman.)

Hanford Agreement. The wording is identical, I believe. It starts out, "In consideration of the contributions of other employers."

Q. Is it your contention, Mr. Rossman, that the Hanford [967] Works Agreement, which I am handing you as Plaintiff's Exhibit 6, is a written agreement between an employer, any employer, regardless of whether he signed that agreement or not, and the union which you represent?

A. It was negotiated for that purpose with the committee to cover all employers doing work on the Hanford Works for the Atomic Energy Commission.

Q. I appreciate that that is your position, but is it your contention that the Hanford Works Agreement, as such, without the signature of a particular employer, was a written agreement with your union?

A. Why, yes.

Q. Merely signed by Hanford Contractors Negotiating Committee, Mr. McCaffree or Mr. McReynolds, or whoever they were? I don't think Mr. McCaffree was actually a member of the committee.

A. Yes, we were assured that they represented all employers on the project, and we didn't expect all the employers to sign the contract any more than I expect three thousand of my members to sign the A.G.C. agreement. I sign for them as their representative.

Q. Who assured you that they represented all employers, Mr. Rossman?

A. The committee and Mr. Shaw.

(Testimony of Arthur A. Rossman.)

Q. Did you ever read this agreement? [968]

A. Yes.

Q. I read this to you:

“This collective bargaining agreement (hereinafter called the agreement) by and between the signatory construction contractors, representing and acting for contractors who presently or during the life of this agreement become signatory to this agreement and perform construction work * * *

Now, did you read that preliminary paragraph, the very first paragraph in the agreement?

A. Yes.

Q. And in spite of that language, you say that you understood that all contractors were parties to this agreement, was that your understanding?

A. Yes, because no contractor ever signed it, to my knowledge, and there were hundreds of them there.

Q. We will find out about that a little later.

Now, were you aware of the fact, Mr. Rossman, that there was a provision in every contract between the Atomic Energy Commission and every prime contractor who has performed work in the Hanford Area for the Atomic Energy Commission since the formation of the Hanford Works Agreement which did not incorporate this [969] agreement into the prime contract, but which contained this language:

“The contractor agrees to pay laborers and mechanics engaged in the work hereunder at Hanford Works the scale of wages and allowances prevail-

(Testimony of Arthur A. Rossman.)

ing at Hanford Works, including all terms of any modification thereof, as determined by the Commission, provided, however, that in no case shall the contractor be required to pay less than the applicable schedule of rates pre-determined by the Secretary of Labor pursuant to the Davis-Bacon Act and attached as Section 3 of Part IV, Wage Rates and Allowances of the Specifications. Sections 1 and 2 of Part IV set forth the scale of prevailing wages and allowances determined by the Commission as of the date indicated therein. There shall be no adjustment in the contract price, nor shall the contractor be entitled to any additional compensation, in event of any increase or decrease in prevailing wages or allowances. 'Allowances' as used herein, shall be construed to mean all payments made to or for the account of laborers or mechanics other than wages. The [970] contractor shall cause appropriate provisions to be inserted in all subcontracts whereby the subcontractors will be required to conform to the following clause * * *

and that as a part of Part IV, which is referred to in the language I just read to you, there was included this language:

"Health and welfare allowances,"

and I will skip some of the sections:

"(g) Operating Engineers. Employers of members of the craft contribute seven and one-half cents per hour of work performed by each worker of this craft into a jointly administered health and security fund."

(Testimony of Arthur A. Rossman.)

Were you aware that every contract which was let subsequent to the Hanford Works Agreement had provisions such as I have read to you?

A. Yes.

Q. Well, now, that is not payment under the Hanford Works Agreement, is it; it is under the terms of the A.E.C. contract? That was the reason you received the health and welfare payments from these contractors, wasn't it?

A. I don't know how that was written in there.

Mr. DeGarmo: That is all.

Mr. Etter: That is all. [971]

The Court: That is all, Mr. Rossman, then.

Mr. Etter: Now, your Honor, I want to call Mr. Rossman as our final witness and I am going to ask him just two or three questions, and I should advise your Honor that Mr. DeGarmo will object on the ground of varying the parol contract, but I want to make this purely as one simple offer of proof from one witness and I am not trying to violate any order of the Court or anything of that kind.

The Court: Yes.

Direct Examination

(Resumed)

By Mr. Etter:

Q. Now, Mr. Rossman, you were present, were you not, or were you present at a meeting with the Associated General Contractors on or about the 3rd day of November of 1955?

A. Yes.

(Testimony of Arthur A. Rossman.)

Q. And will you tell us who was present at that meeting on behalf of the Associated General Contractors committee?

A. George Sebeck, Sam Guess, Dewey Murrow—that committee varied from time to time. Unless I refer to notes——

Q. Do you recall Mr. Winslow was there?

A. Yes, Mr. Frank Winslow was there.

Q. Mr. Sather? [972] A. Mr. Sather.

Q. Mr. Degerstrom?

A. Neal Degerstrom.

Q. All right, and who was present on behalf of the Operating Engineers?

A. Dick Hollingsworth and myself.

Q. Now, what type of a meeting was that?

A. It was one of many meetings held to negotiate the 1956, '57 and '58 A.G.C. contract.

Q. That is the contract that is in here so far as the defendant Engineers are concerned, Exhibit No. 3?

A. Yes.

Q. Will you state whether or not during that discussion there was conversation and discussion and negotiation with respect to Article II of the Exhibit No. 3 referring to territory and work covered?

Mr. DeGarmo: Just a minute——

A. Yes.

Mr. DeGarmo: Now, if your Honor please, at this point I wish to object to the testimony upon the ground that it is an attempt to go behind the

(Testimony of Arthur A. Rossman.)

ruling of the Court and to vary the terms of the contract by showing the pre-contract negotiations.

The Court: Yes, I will sustain the objection, but I see no reason why you couldn't make an offer of proof [973] as to what this witness would testify if permitted to do so.

Mr. Etter: From now on, that's right.

The Court: Yes.

Mr. Etter: I now offer to prove your Honor, in view of the objection and the Court's ruling, that if the witness were permitted to testify, he would testify as follows:

That a discussion was held at this particular meeting, referring to November 3rd, 1955, at which the named persons were present in a contract negotiation meeting between the Associated General Contractors and the defendant union Engineers No. 370, and that at that time during this discussion there was discussed Article II, Territory and Work Covered, and that the witness would testify that the group indicated that there should be a clarification about a part of Article II with reference to Idaho County, north half, and that likewise during that discussion with respect to that clarification, there was a suggestion for clarification of the relationship of the proposed contract to the Hanford Agreement, and that at that time one of the representatives of the Associated General Contractors, Mr. Dewey Murrow, stated to the Engineers and to those present that the Associated General Contractors were in no wise interested in the [974]

(Testimony of Arthur A. Rossman.)

Hanford Project and were not negotiating on any conditions for the Hanford contract because it was an old agreement to which different fringe benefits were attached.

That, likewise, at said meeting the matter of Article III, Hiring, was discussed; that likewise Section 2, Regular Hours of Work, was discussed; that Article V, Working Rules, Schedule A, was discussed, as were the following other matters, all in connection with the proposed contract to which reference is made as Exhibit 3 in this case:

(1) With respect to mucking machine oiler, trenching machine, concrete paving machine, with respect to one hour's time firing up the boiler, with regard to all repair by or under supervision, with regard to Section 5 of Article V, and I might say this, that these last that I have repeated starting with mucking machine as one and continuing through are all part of Article V and the testimony of the witness would show that discussion was centered on those one, two, three, four, five, six, and seven, and that is it.

Mr. DeGarmo: I object to the offer of proof upon those same grounds as stated to the testimony of the witness.

The Court: Very well, objection will be [975] sustained.

Mr. Etter: That is all, Mr. Rossman.

Mr. DeGarmo: I have no further questions, Mr. Rossman.

(Witness excused.)

Mr. Etter: That is our case, your Honor.

Mr. DeGarmo: At this time, if your Honor please, for the purpose of the record I wish to move that there be stricken from the evidence all testimony concerning negotiations between the Hanford Contractors Negotiating Committee and representatives of the defendant unions during the period from January 1, 1956, until March 8, 1956——

The Court: Pardon me for interrupting you, Mr. DeGarmo——

Mr. DeGarmo: Yes.

The Court: ——but I didn't get—you have no objection to Mr. Rossman answering from where he is?

Mr. DeGarmo: Surely.

The Court: ——the date of this conference, or approximate date?

Mr. DeGarmo: I think he said November 3rd.

The Court: He gave that, but I didn't get it in my notes.

Mr. Rossman: Yes, November 3rd. [976]

Mr. Etter: Yes, November 3rd, your Honor.

The Court: Yes, thank you, all right. All right, Mr. DeGarmo.

Mr. DeGarmo: During the period from January 1st until March 8th, 1956, upon the ground that there has been no evidence introduced by the defendants which would show the authority of the Hanford Contractors Negotiating Committee to act on behalf of the plaintiff in this case. I make that as one motion.

I also move to strike from the record any reference to negotiations or dealings between the Hanford Contractors Negotiating Committee and the defendant unions or members thereof in the period prior to January 1, 1956, upon the same ground, that there has been no testimony offered on the part of the defendants which would show the agency or authority of the Hanford Contractors Negotiating Committee to act on behalf of the plaintiff.

The Court: The motions will be denied. I think, as I have heretofore indicated, there is doubtless a good deal of evidence admitted here, and perhaps more will be admitted, that the Court may not ultimately find is of much value or of much materiality so far as the issues, the real issues, between the parties are concerned, and the Court, you may be assured, will [977] consider it only insofar as it is material to the issues when the case is decided, but for the record, the motions will be denied.

Mr. DeGarmo: Thank you, your Honor.

I would like to call Mr. Knack as a rebuttal witness.

The Court: Let's see, Mr. Knack was sworn?

Mr. DeGarmo: Mr. Knack has been sworn, yes.

There is one question that I would like to ask of the Court and perhaps I should ask it of counsel in order that I may determine what course the rebuttal evidence in this case should take upon one feature of this case.

Your Honor will recall that I did not move to strike one section of the affirmative defense which

had been interposed relating to the question of jurisdiction of the United States Government at Hanford Works, and by the amendment to the pleadings they have again reinserted that provision in the amended affirmative defense. I have heard no testimony or reference to testimony upon it, and in order that I may know whether I am forced to attempt to meet that, I believe that I should be advised by counsel as to whether they are still relying upon that affirmative defense.

Now, the reason I ask the question is that there [978] were some requests for admissions and there are some documents in the file in the nature of answers to requests for admissions that bear on that subject, and I don't know whether they intend to argue those and whether they are still relying on that as a defense or not. If they are, then I have some testimony that I will wish to introduce upon the subject and I don't wish to do it if they are not still relying upon it.

Mr. Etter: Well, your Honor, our position is that the status, let's say, let's put it that way, of the Hanford Works Area is indicated and shown by the requests and the answers to the requests for admissions as they appear in the record.

Mr. DeGarmo: I take it you intend to argue that, then?

Mr. Etter: Yes, that would be our position. We don't take issue——

Mr. DeGarmo: Then, we will offer——

Mr. Etter: ——with admissions that are in the record made upon request of both parties.

Mr. DeGarmo: Then, I will be forced to introduce evidence on it.

The Court: I thought that counsel now took the position that there was concurrent jurisdiction.

Mr. DeGarmo: Well, of course, there wasn't even [979] that, and I will have to show that, I guess.

Mr. Etter: Our position is this, your Honor, without disputing what Mr. DeGarmo said about concurrent or measure of concurrency and a non-measure of concurrency, that the proper situation is indicated by the declarations for admissions and that it is some kind of a hybrid organization that it would take more than me, at least, to describe.

The Court: All right. I get the impression that counsel is not pressing the point raised earlier in the lawsuit, that the Hanford Reservation is not a part of Benton County, but I gather now that counsel thinks that it may have some factual significance here, the peculiar nature of the area, in bearing upon the point that it had special treatment and was not included in some of these general contracts or in the application of the general A.G.C. contracts.

Mr. Etter: That correctly states our position.

The Court: Yes.

Mr. DeGarmo: All right, I know where to proceed, then.

LEE J. KNACK

having been previously sworn, resumed the stand in rebuttal, and testified further as follows: [980]

Direct Examination

By Mr. DeGarmo:

Q. Mr. Knack, you have already been sworn and have testified in this case. I want to direct your attention to just two particular meetings at which it has been stated attended.

I refer first to the meeting held at Richland, Washington, on the morning of January 5th, 1956. Will you state first, Mr. Knack, where that meeting was held?

A. Well, it was held in the administrative area, I presume, of the A.E.C. I have not been over there very frequently and do not know explicit locations, but it was at one of the offices of the A.E.C. area, because I remember we had to get a badge or clearance or something there in the morning to go in.

The Court: That was behind the barrier, then, not down in the town of Richland?

A. Well, I don't know, sir, what is behind the barrier and what constitutes otherwise. I am not familiar with that.

The Court: All right.

Q. (By Mr. DeGarmo): It was in one of the administration buildings, that you know, but beyond that, you don't?

A. I could say in the administration area. [981]

Q. In the administration area. All right. It was

(Testimony of Lee J. Knack.)

in the city of Richland, do you remember where it was from the hotel?

A. It was across the street. Again not being familiar with directions there, I would say it was south.

Q. Of the Desert Inn?

A. Of the Desert Inn.

The Court: That was just in the big administration building there in Richland? A. Yes.

The Court: It wouldn't be in the Area, then. Go ahead.

Q. (By Mr. DeGarmo): Can you relate for the record, Mr. Knack, your memory of who were present at this meeting?

A. Mr. Reed of Morrison-Knudsen Company was present there, Mr. Thurston of the A.E.C. was present, Mr. Ken McCaffree, Mr. Art Rossman, Mr. Knapp, Charlie Knapp, was there, Mr. Sewell Davis, and I remember there were others there, too. I remember quite distinctly that at the onset of the meeting Mr. Cochran was not present at the onset, but came in late.

Q. Now, first, Mr. Rossman I think the record will identify. Mr. Sewell Davis, who was he?

A. With the Teamsters.

Q. And Mr. Knapp is the witness who testified here in this [982] case? A. Yes.

Q. And who would be Mr. Mickey Cochran?

A. Insofar as I know, he was affiliated or some part of the L. H. Hoffman Construction Company.

(Testimony of Lee J. Knack.)

Q. Do you recall, Mr. Knack, how you came to attend this particular meeting?

A. Well, yes, I had arrived at the area and had checked in at the Richland hotel specifically to attend the meeting on the afternoon of January 5th, that had been requested by the Pasco-Kennewick Building Trades secretary, Bud Shirk, through our Mr. Reed, and through phone communications to me we had arranged such a meeting, and on my arrival there the day preceding, the A.E.C. had indicated that they wished to have us meet with them prior to it, Mr. Reed was introduced around, and then we were asked if we would sit in that meeting that was taking place that morning. We were asked specifically by Mr. Thurston.

Q. All right, now, will you relate as nearly as you can recall what took place at this morning meeting, what was said by you, if anything, what was said by Mr. Reed, if anything, by Mr. Ross, by Mr. Davis. In other words, what was the meeting and what was said, as nearly as you can recall at this time?

A. Well, as the meeting opened, I remember explicitly that [983] Mr. McCaffree indicated that the presence of both Mr. Reed and myself was as observers to the meeting, and at that point I emphasized that myself to those in attendance at the meeting and concluded that if there were any objections on the part of any of the people in the meeting, that is, either of union representatives or of the Hanford Committee Representatives to our being there, we certainly would invite ourselves out very quickly;

(Testimony of Lee J. Knack.)

that we were not there except by their acquiescence to our being there as observers; and I quite definitely emphasized the fact that we were observers.

Q. Did anyone request that you leave?

A. No, sir.

Q. All right, then what occurred?

A. Considerable time was spent in discussion, primarily between Mr. McCaffree and Mr. Knapp, that conversation being along the lines of who did Mr. Knapp represent. There were some charges or statements made back and forth concerning other meetings that had been held with other crafts or requests for meetings that had been made to Mr. McCaffree and he, in turn, had not notified Mr. Knapp about it, and there was some allegations about some circumstances of Mr. McCaffree lending some support to other crafts pulling out of the Hanford Works [984] Association from the union standpoint, and there again the question came up as to who Mr. Knapp did represent for whom he was speaking in this particular meeting.

A good deal of the conversation swung along those questions, the question first of who did Mr. Knapp represent and the question of who Mr. McCaffree may have been meeting with or been agreeing to meet with through contacts, and so forth.

Q. What answers did Mr. Knapp give to these questions which were put to him by Mr. McCaffree as to who he did represent?

A. I don't recall that Mr. Knapp specifically identified who he represented. There was never any

(Testimony of Lee J. Knack.)

specific identification as to his representation. In one course of the meeting, and this, I think, was very shortly after Mr. Cochran came into the meeting, we had been in session, oh, I would say approximately three quarters of an hour, somewhere in that neighborhood, when Mr. Cochran came in late, and at approximately that time, shortly thereafter, I can very definitely recollect that the only other conversational participation that I had in that meeting was pointing out that insofar as Morrison-Knudsen Company was concerned, that as I could determine from what I was hearing and some of the information that I had, that we occupied a different position from any other contractors [985] then currently on the project in that we were not signatory to the Hanford Works Agreement, nor had we ever designated the Hanford Negotiating Committee as our agent and we were bound by an A.G.C. agreement, and it was at that time that I made specifically reference to the fact that that agreement had an inclusion in it which prohibited special job agreements and directed my references in that instance to Mr. Rossman, at which time Mr. Rossman indicated to me that he didn't wish to comment or to make any commitment to my observation, that he chose rather to get legal advice on the matter, and I indicated to him that I felt if I were in a similar position as he was, perhaps I would make the same observation.

Q. About how long did this meeting last in the morning, Mr. Knack?

(Testimony of Lee J. Knack.)

A. I would say somewhere in excess of an hour and under two hours.

Q. Do you recall any other specific items of discussion in the morning meeting?

A. Not any specific items, except that I do recall there was some humorous by-play when Mr. Cochran came in, some kidding and joking back and forth, and that occurred for just a few minutes.

Q. Now, reference has been made by a number of the [986] defendants' witnesses to a meeting held at the Pasco-Kennewick Building Trades Council headquarters on the afternoon of January 5th, of 1956. Do you recall the meeting?

A. Yes, I do.

Q. And Mr. Reed was there with you, as I understand it?

A. Yes, he was.

Q. Will you tell us who were present there, as nearly as you can recall?

A. Of course, there was Mr. Reed and myself, Mr. Bill Dunn, who did open the meeting in the capacity of chairman——

Q. That is William H. Dunn, who testified here as a witness?

A. Yes. There was a representative from the Sheet Metal Workers, as I remember, and a representative from the Roofers, Mr. Bud Shirk was there some of the time, Mr. Redmond of the Electricians was there, and there were others that by either association with their identities or of union affiliations or names I would not be able to recollect.

(Testimony of Lee J. Knack.)

There were many people in that meeting that I met that day for the first time.

Q. All right, now, will you tell us, as nearly as you can recall, the subjects which were discussed by you at that meeting?

A. Well, I recall—— [987]

Q. I understand this meeting took place about three hours in length or two and a half hours, and I don't want to get all of the entire meeting in the record, but I would like to know what the subjects were just by subject matter.

A. Well, first of all, was, of course, the introduction of Mr. Reed as project manager to the group and identifying who he would be. We then discussed — a subject which we discussed, a topic, was the nature of the contract that we had, the type of work that was involved, and the circumstances surrounding it, approximate schedules of anticipated requirements of manpower, anticipated completion time of the job, and so forth. We also discussed, and I should say that in saying these as topics, it was all discussion in that questions were asked and questions were answered.

The question of subcontractors was discussed — the topic of subcontractors was discussed. We discussed at quite some length, at least I did, the question of jurisdictional disputes, the company's policy in relation to jurisdictional disputes, and how I would request the business agents who would be involved in policing the work or furnishing services to the job, how I would expect them to work in

(Testimony of Lee J. Knack.)

relation to our policy on jurisdictional disputes. [988]

There was topics of some of Morrison-Knudsen's other work in other areas, specifically because Mr. Reed had just then recently come down from the Aluminum Company job in Canada. There was considerable comments and discussions about that, I suppose one might say as an interesting factor rather than as a related factor to the meeting itself.

Also discussed in connection with the jurisdictional problem which I brought up, there was a discussion on the part of one union representative, specifically, Mr. Dunn asked me if there was going to be any problem of them getting out to visit the job in order to investigate the conditions or circumstances. I was curious as to why such a question was raised and was told that there was a specific instance and there were instances where union representatives were unable to get on the site because of security provisions, and they felt that there were occasions when contractors were using that as a device to keep them off, rather than a cooperative effort to help them do the necessary investigating work that they had to do. Assurance was given that any business agent could visit our job without any difficulty.

We also mentioned the location of the office that we had been in a very short period of time there, what was going on in that office. [989]

We also had the customary number of jokes that are told in sessions such as that.

(Testimony of Lee J. Knack.)

There was also the question that was posed as to the circumstances relating to the practice that prevailed in the area of the payment of transportation or furnishing transportation and isolation pay.

Q. All right, now, on that subject, Mr. Knack, I want to ask you specifically, you were present in court during the testimony of Mr. Dunn and Mr. Rossman and Mr. Clarey. Without asking you to either dispute or approve what they said, I wish you to tell the Court now your recollection of exactly what question was asked you and what answer you gave to the question concerning the question of bus transportation and isolation pay.

A. Well, the question was put to me about the payment of bus — or furnishing of bus transportation and the payment of isolation pay, and my first and immediate reaction to it was that certainly I didn't think that it was fair for the——

Q. I want you to state what you said, not what your reaction was.

A. Well, I said this, this is what I said: This was my — when I said reaction, I should have said response. I said that it was not fair for the people there to figure that they could use the Morrison-Knudsen Company [990] as the solution to their problem or as a wedge when they had the problem with other contractors; that we certainly were not there to either be the solution to problems, nor to establish or break precedents, as the case may be; that their problems had to be dealt with with the people with whom they had the problem, and that

(Testimony of Lee J. Knack.)

insofar as the conditions and circumstances were involved, that we were not — I was not going to tell them that we were going to discontinue furnishing the transportation or paying the isolation pay, but that certainly there was a problem there that I didn't know when that problem was going to be answered, nor did I know how it was going to be answered, and, therefore, I felt that they were attempting to get the solution to the problem from me when I was not the party nor my company was the people who could solve the problem for them.

Q. Had you learned of this problem in this morning meeting at which Mr. Rossman and these other parties were present? A. Yes.

Q. I want to ask you specifically, Mr. Knack, what information, if any, you had at the time as to the basis upon which Morrison-Knudsen Company made its bid for the Hanford Works Contract? [991]

A. I had no knowledge as to how that job was specifically bid at that time.

Q. Why did you have no knowledge?

A. Well, the explanation for that, sir, requires a little bit of explanation of the relationship of how I function within the Labor Relations Department for the company.

Our company is set up in divisions and districts, and it is my job to service the various divisions and districts upon request. One of the services that my office furnishes to those divisions and districts is labor information on prospective jobs which are to be bid. At again by request of the district or divi-

(Testimony of Lee J. Knack.)

sion, will send me a form which we have and request me to fill in the form on the various crafts or classifications, and so forth. This job having been bid out of our Seattle District, I had not been requested to furnish the information, the labor information, for the bidding of this particular job.

Q. Then, as of the date of this meeting on January 5th, 1956, what information did you have as to whether bus transportation or isolation pay had or had not been included in any bid estimate?

A. I would have no information of that at all at that time.

Q. I wish to ask you the specific question, Mr. Knack, as to what statement you made at this meeting as to the [992] Morrison-Knudsen Company having bid this job on the basis of paying isolation pay and furnishing bus transportation?

A. There was some discussion as to how we may have bid the job and that resulted in my pointing out that the question of how we bid jobs and how we are going to operate those jobs is one that I would be quite interested in going into in a deeper vein in all areas, and pointed out that I had never yet been approached by any organized labor that would sit down at the time we were figuring a job or after we had figured a job and would agree to complete the job as we had bid it; that constantly we were confronted with the problem of bidding jobs and during the course and life of that job being confronted with rising costs of wage increase,

(Testimony of Lee J. Knack.)

labor costs, and so forth, and I made reference to that situation and pointed to one of the incidents that had occurred, a negotiation that I had just come off of where that was highlighted, Table Rock Dam down in Missouri, and spent some time explaining the situation about bidding jobs and the relationship as to how they are bid and the costs after we get them.

Q. I wish to ask you, Mr. Knack — I am reading now from a transcript of Mr. Knapp's testimony — if at this meeting you made this statement: [993]

“He said they would pay isolation pay and continue to furnish transportation. He said that the Morrison-Knudsen Company had bid the job planning on paying isolation pay and furnishing transportation; that was the way they figured the job.”

A. No, I did not.

Q. I am reading to you now from a transcript of the testimony of Mr. William H. Dunn. I wish to ask you if at this meeting on the 5th of January, 1956, you made this statement in response to the question which Mr. Knapp states he asked you:

“We bid this under the Hanford Works Agreement and we are going to do the job under that.”

A. I did not.

Q. Did you make any statement, Mr. Knack, other than as you have just testified here?

A. In relation——

Q. In relation to that particular subject?

A. Not — insofar as words are concerned, the

(Testimony of Lee J. Knack.)

substance of what was said is what I have testified to.

Q. Mr. Knack, when was the first time since January 5th of 1956 that you ever heard the contention made or a statement made that you had agreed in the meeting of [994] January 5th, 1956, that the Morrison-Knudsen Company would continue to furnish transportation and pay isolation pay upon the Hanford Works Project?

A. In this courtroom when these proceedings began.

Mr. DeGarmo: You may examine.

The Court: We will take a recess now for ten minutes.

(Short recess.)

The Court: Had you finished, Mr. DeGarmo?

Mr. DeGarmo: Yes, I was through.

The Court: All right, cross-examination.

Cross-Examination

By Mr. Etter:

Q. Now, as I understand, Mr. Knack, when this matter of the isolation pay and the bus transportation came up in this meeting, you advised these people, that is, the men who were gathered there, that you didn't think it was proper for them to use M-K for a wedge or for a solution of the problem, that you said that? A. Yes.

Q. And you weren't there to solve or to break precedents, is that correct?

(Testimony of Lee J. Knack.)

A. That is correct.

Q. And I gather this all concerned bus transportation and [995] isolation pay? A. Yes.

Q. And that you said that they had to deal with those who had the problem? A. Yes.

Q. And at that time, were you made aware of the fact that it was an important problem to the people that inquired of you about bus transportation and isolation pay?

A. Well, not as such. I mean, my awareness of the problem arose from my having been in the morning meeting as an observer and I was familiar with the situation to that extent.

Q. Well, but I mean these men who asked about it, did you gather that it was an important problem with them?

A. Well, again, I gathered it from the circumstances that I was acquainted with and not by any specific reference that they may have made.

Q. Well, from what you had known before, did you gather that it was important to them from the questions they asked you about it?

A. I would have gathered that it was important, yes.

Q. I see. Well, were they at that time interested in whether or not you were going to continue bus transportation and were going to continue to pay isolation pay?

A. Well, actually, the question as to how the job may have [996] been bid, came into the discussion, I did not——

(Testimony of Lee J. Knack.)

Q. No, no, I am not asking you that, I am asking you if they asked you whether you were going to pay the isolation pay and whether M-K was going to retain the bus transportation? Did they ask you that?

A. They asked me the question, yes, they brought it up for discussion.

Q. Well, when they asked you that question, whether you were going to do it or whether you were not going to do it, did you tell them one way or the other what you were going to do?

A. I indicated that under the circumstances that I was going to tell them that at the time we were not going to discontinue the furnishing of the transportation and the payment of isolation pay.

Q. What did you say then, that you were not going to discontinue isolation pay or bus transportation?

A. As of that time?

Q. Yes, as of that time?

A. That is correct.

Q. What time did you tell them, as of the 5th?

A. Of what time did I tell them what, sir?

Q. Yes, you say now that what you told them was you were not going to discontinue the isolation pay and you were not going to discontinue the bus transportation? [997]

A. That is correct.

Q. Well, did you say, did you qualify that and say "Now" or "Until the end of this job" or "Halfway through this job?" How did you qualify that, if you did qualify it?

(Testimony of Lee J. Knack.)

A. I didn't qualify it.

Q. I see. Then, what you said was, "We are not going to discontinue it?"

A. "At this time."

Q. I see. "At this time?" A. Yes.

Q. In other words, now——

A. Indicating and going on to the point that they had the problem with the other people there and the question of the isolation pay and the bus transportation insofar as future was concerned was a problem for them to solve with the people with whom they had been dealing and the other contractors.

Q. Well, didn't they ask you whether you were going to continue this on your contract? Isn't that what they said?

A. They wanted to know if we were going to pay it——

Q. Yes. A. ——at that time, certainly.

Q. Yes. And you said you were?

A. Yes, I said that we were not going to discontinue it at [998] that time.

Q. I see. You didn't say to them that, "We have a contract that became effective four days ago that absolves us from paying any isolation pay or providing any busses"? Did you say that to any of them?

A. No, I didn't say that to the group, because the people who were in the group, there were many representatives in the group with whom we had no agreements and there were many representatives in

(Testimony of Lee J. Knack.)

the group that worked for subcontractors under different agreements.

Q. But there were representatives there that you had agreements with, were there not, on that project?

A. Insofar as the Operating Engineers were concerned, they were present there, yes.

Q. Did you say to Mr. Rossman or to Mr. Dunn that, "We don't—we are not interested, we have no problem, because we have a contract?"

A. No, I didn't say it in that meeting, because in the morning meeting I had made reference to it to Mr. Rossman and he had indicated to me that he didn't wish to reply to the commitment, he wished to get legal counsel on the situation, and on that basis I certainly didn't expect that Mr. Rossman would have had an answer by that afternoon.

Q. You say that he inquired of you about the bus transportation [999] and the isolation pay in the morning?

A. No, no, Mr. Rossman did not inquire that of me at all.

Q. I see.

A. I mean, I made the observation myself that we were in a different position from other contractors in the area.

Q. I see. But this conversation that you had, there was some discussion that was more than cursory about the bus transportation and the isolation pay?

A. Yes, it was more than cursory. I think that

(Testimony of Lee J. Knack.)

it is proper to say that, insofar as the discussion in the afternoon relating to this question, Mr. Rossman did not make any statements in the afternoon meeting in relation to it.

Q. No, but I mean the discussion in the afternoon meeting was not a cursory discussion?

A. Well, it would depend on what you would mean as to "cursory," sir, because the question, the discussion, was not involving all the people in the room. There were many people——

Q. Well, whichever ones it might have involved, you did, however, continue to pay the isolation pay and the bus transportation up until the 22nd of March?

A. That is true, yes.

Q. Is that correct?

A. Yes. [1000]

Q. And made no indication up until that time through any party at all that you were going to discontinue it?

A. Through our agent, the A.G.C.

Q. Well, not until March, however?

A. I wouldn't know of those dates, sir, because I wasn't present at any of the meetings.

Q. Well, you don't know that any earlier notification otherwise was given until the date indicated in the testimony here, which is sometime in March?

A. I had no contact with any representatives in relation to the Hanford Works Project after January 1st, either by phone or otherwise.

Q. After January 5th?

A. After January 5th, I'm sorry.

(Testimony of Lee J. Knack.)

Q. No further contacts of any kind?

A. With any representatives of the unions in relation to the Hanford job.

Q. I see.

Mr. Etter: That is all. Oh, Mr. Carey.

Mr. Carey: May I?

The Court: Yes.

Cross-Examination

By Mr. Carey:

Q. Mr. Knack, you recall, no doubt, that on the afternoon [1001] of the first day of trial, which was the 10th, that you testified, at least generally, about this same subject of this meeting, or these two meetings? A. Yes, sir.

Q. Do you recall that the following morning I undertook to cross-examine you?

A. Yes, I do.

Q. Now, in your examination here, direct examination, just concluded, you said something to the effect that Morrison-Knudsen did not want to get itself in the position of being a wedge. Do you recall that?

A. I said, I think, that we didn't want to be used as a wedge.

Q. Used as a wedge? A. Yes, sir.

Q. Yes. On the former occasion, you used the expression as I recall, several times that Morrison-Knudsen didn't want to get in the position of being "in the bight of the line." Do you remember that?

A. I think I said words to that effect, sir.

(Testimony of Lee J. Knack.)

Q. Yes. Now, I know what "bight of the line" means on the Seattle waterfront, but I don't know that I know what it means east of the mountains. Now, this meeting on the morning which was at Richland, as I recall your statement, that was more or less casual, that is—— [1002]

A. I don't recall, sir, at all that I indicated that the morning meeting was casual at all, because sitting as an observer, my observations were that it was anything but casual.

Q. Well, did you go to Pasco or Richland specifically to participate in those meetings on that day?

A. I went specifically to participate in the afternoon meeting at Pasco.

Q. That was my understanding. I think you testified on the former occasion that that meeting had been arranged some time in advance, the afternoon meeting, I am speaking of now.

A. Yes, the meeting between the Building Trades Council and the Morrison-Knudsen Company had been arranged from contacts that had started some time in mid-December between Mr. Reed and Mr. Bud Shirk.

Q. Well, did you go to Pasco and Kennewick or Richland specifically to attend that pre-arranged meeting that occurred in the afternoon of the 5th?

A. Yes, that was the purpose of my visit there.

Q. Yes. You, I assume, had a personal acquaintance with Mr. Rossman, Mr. Knapp, most of the representatives of the unions, before that meeting?

(Testimony of Lee J. Knack.)

A. I had a personal acquaintance with comparatively few of them, sir, because I hadn't been in Pasco for quite some [1003] time prior to this and I, of course, knew Mr. Rossman very well. I knew Mr. Knapp on the basis that I may have met him on approximately five or six times very briefly prior to that time and some three or four—three years prior to that time. There were others in the meeting that—in the afternoon meeting—whom I met as of that afternoon for the first time.

Q. Now, you were there in company with Mr. Reed, Mr. Ray Reed—— A. That is correct.

Q. ——who was introduced as the project manager? A. That is correct, sir.

Q. And so far as Morrison-Knudsen was concerned, it was a serious meeting having to do with discussions of various problems that might arise during the course of this very important job?

A. Well, as to what the nature of those meetings are, before you go into them, pre-job conference meetings, as has been acquainted, meetings of jobs of this proportion, and they vary considerably, so I would have no knowledge or have no idea of what the nature of that meeting would be until I actually got into the meeting. Quite often they are no more than, again using the phrase that you mentioned, casual in nature.

Q. At any rate, was this Mr. Reed's first assignment to work [1004] in that area?

A. To my knowledge, yes.

Q. Well, when this problem was put up to you

(Testimony of Lee J. Knack.)

—I am speaking now about the discussion of isolation pay and transportation—you knew that had been the matter of, we'll say, difference of opinion between the unions and the contractors for some time?

A. As to the length of time and the circumstances involved, Mr. Carey, I wasn't too familiar with it, frankly, because, as I said before, I had not been in the Pasco area for some years and the first-hand knowledge that I had of any conditions or circumstances was on my arrival in Richland on the 4th and most of that information that I obtained, the initial information, was in conversations with Mr. Thurston of the A.E.C. and some other people, and that was in the morning of the 5th prior to the meeting with the unions in the morning of the 5th. Mr. Reed and I visited the A.E.C. operations and were introduced to some of the personnel whom we didn't know by A.E.C. people, and we were somewhat briefed that there was a problem there by those people.

Q. Well, isn't it a fact, Mr. Knack, that what you meant, or the view you intended to express, in that meeting representing Morrison-Knudsen, you did not want to be forced into a position, at the instance of other [1005] contractors or anybody else, which would put you in conflict with the unions on the job then in progress?

A. I don't think I expressed it that way, Mr. Carey. To me, having come into the area and not having had some, at least, current background of

(Testimony of Lee J. Knack.)

the circumstances and conditions, I was aware only of the fact that there was a problem there and the details of that problem and the intrigues that may have been involved in meetings, and so forth, I was totally unaware of it, and in my conversations with Mr. Thurston the morning before we met with the unions, Mr. Thurston requested the Morrison-Knudsen Company to continue paying the isolation pay and the furnishing of bus transportation. At the time, I asked him if that was an official request. He said, because of the circumstances, he could only make it as an unofficial request. That was part of the circumstances.

Mr. Carey: Well, will you read my question again?

(Question read.)

Q. (By Mr. Carey): Isn't that, in substance, the position you took?

A. Well, sir, when you asked the question about being forced by other contractors, I felt no factor of force by other contractors at all. [1006]

Q. Well, isn't that, in substance, what you meant when this morning you said you didn't want to be used as a wedge, when last Monday or a week ago Monday you said you didn't want to get "in the bight of the line"? Isn't that, in substance, what you meant?

A. Well, in substance, what I meant, sir, was that I didn't want to be—our company to be the people who were going to lead the way and be put

(Testimony of Lee J. Knack.)

in a position—as a newcomer to the work, we had not been involved in these things in the past, our position was somewhat different from other contractors, substantially different, as a matter of fact, and that I didn't want my company being the company that was going to be the party to come into that area and cause conditions, either to the area or to ourselves——

Q. That is, you didn't want to disrupt a working arrangement that had been in existence for some considerable time?

A. At the particular time, in view of the conversations that I had had with Mr. Thurston, I felt that it was expedient for our company, even though the request had been unofficial, under the circumstances, to abide by that request.

Q. Yes. I think there is one other question. Did you hear any jokes there that were worth repeating? [1007]

A. Well, Mr. Carey, in that respect I would have to say yes, because I think I told most of the jokes.

The Court: That is a matter for the recess.

Mr. Carey: All right.

The Court: Any other questions?

Mr. Carey: No, that is all.

Mr. DeGarmo: I have just one question.

(Testimony of Lee J. Knack.)

Redirect Examination

By Mr. DeGarmo:

Q. Mr. Knack, was there a difference in the situation of Morrison-Knudsen Company with Mr. Charles Knapp and his local, the Cement Finishers, and the situation of Morrison-Knudsen Company with the Operating Engineers and the Teamsters?

A. Insofar as I knew at that time, there was no agreement between the Cement Finishers and the Morrison-Knudsen Company, either direct or through the A.G.C.

Q. But you did have an agreement with both of the other two that I have mentioned through the A.G.C.?

A. Yes, that is correct.

Mr. DeGarmo: That is the only question I had.

Recross-Examination

By Mr. Etter:

Q. You, of course, didn't point that out to Mr. Knapp or to [1008] Mr. Rossman or to Mr. Dunn?

A. Again in the afternoon meeting, I did not point it out to Mr. Knapp or Mr. Dunn.

Mr. Etter: All right, that is all.

Mr. DeGarmo: That is all, Mr. Knack.

Call Mr. McCaffree.

(Witness excused.)

KENNETH M. McCaffree

called and sworn as a witness on behalf of the plaintiff in rebuttal, was examined and testified as follows:

Direct Examination

By Mr. DeGarmo:

Q. Mr. McCaffree—perhaps I should say Dr. McCaffree—will you state where you reside?

A. Seattle, Washington.

Q. And what is your occupation or profession?

A. I am a University professor.

Q. At what university?

A. The University of Washington.

Q. And for what period of time have you been a professor at the University of Washington?

A. I have been under contract with the University since 1949. Two years during that time I was on leave of absence without pay. [1009]

Q. And during that period of time when you were on leave of absence without pay, were you in some manner connected with the Hanford Contractors Negotiating Committee?

A. For the period beginning in March, 1953, until October, 1954, I served as Executive Secretary of the Hanford Contractors Negotiating Committee. I was also more generally known as the labor coordinator, construction contract, or coordinator for labor relations.

Q. Doctor, will you state for the record your age?

A. I am 37. I will be 38 next week.

Q. In order that we may have some background

(Testimony of Kenneth M. McCaffree.)

of your experience in the labor relations field, will you state what educational background you have and what experience you have had in that field?

A. I have a Doctor of Philosophy degree from — in Economics — from the University of Chicago, granted in 1950. My major field of interest was labor economics and industrial relations. The years '48 and '49 I was a research assistant with the University of Chicago. Since 1949, I have been teaching labor relations, primarily, at the University of Washington, although I teach some introductory and intermediate economics.

In addition to the experience at Hanford, I was for eight months associated with the 13th Regional Wage [1010] Stabilization Board as a supervisor in the case analysis division. I have done a certain amount of reading and writing in the field.

Q. Doctor, are you familiar with the document which has been popularly referred to as the Hanford Works Agreement?

A. This is the agreement which was in effect at the Hanford Project for, I guess, September, October, 1952, for a period of months thereafter.

Q. As I understand it, you first came to the Hanford Project in 1953, which would be subsequent to the date of the negotiation and the execution of that agreement by the Hanford Contractors Negotiating Committee?

A. That is correct.

Q. I am handing you, Doctor, that which has been introduced in evidence here as Plaintiff's Ex-

(Testimony of Kenneth M. McCaffree.)

hibit 6. Will you examine it and state what it is, if you recognize it?

A. This is a copy of the Hanford Works Agreement entered into on the 29th day of September, 1952, and I presume the attached Schedule A is for the respective crafts that were signatory thereto.

Q. Doctor, were you ever personally a member of the Hanford Contractors Negotiating Committee, as such?

A. I was never so considered by the contractors. I was designated, actually, as the administrative staff to the [1011] committee and referred to as the executive secretary. It is true in 1955 that I did on occasion serve as the spokesman for the committee.

Q. But you were not an officially designated member?

A. I was not officially designated as a member.

Q. I am calling your attention, Dr. McCaffree, to the last page of the first and general portion of the agreement, Exhibit 6, to a portion which reads, "In witness whereof, the parties have caused this agreement to be executed by their duly authorized representatives," below which appears a line with the word "Contractor" underneath "By," and I wish to ask you whether, to your knowledge, the Hanford Works Agreement was ever actually signed by the contractors performing work at the Hanford Works Project?

A. I have seen the signatures of four individuals representing four separate contractors with A.E.C. contracts at Hanford. These were the Atkin-

(Testimony of Kenneth M. McCaffree.)

son-Jones joint venture, Kaiser Engineers, Blaw-Knox Company, and the J. A. Jones Construction Company.

Q. Now, in relation to the amount of work which was done at the Hanford Works, where would these four contractors that you have mentioned fit into the scale? Would they be considered as the larger contractors or would they be some of the smaller contractors? [1012]

A. Well, certainly, until into 1955, they would represent something over 90 per cent of the employment, construction employment, on the Project.

Q. I want to call your attention, Doctor, to the preliminary paragraph of the Hanford Works Agreement, Plaintiff's Exhibit 6, and particularly to the statement, "This collective bargaining agreement (hereinafter called the agreement) by and between the signatory construction contractors, representing and acting for contractors who presently or during the life of this agreement become signatory to this agreement and perform construction, alteration, or repair of public works at the Hanford Works, State of Washington," and I wish to ask you, during the period of the negotiations in 1955 with labor unions, who the Hanford Contractors Negotiating Committee of which you were the executive secretary was representing?

A. Well, we were representing the contractors who were signatory to the Hanford Works Agreement.

Q. Anyone else?

(Testimony of Kenneth M. McCaffree.)

A. Not to my knowledge.

Q. Did you represent the Morrison-Knudsen Company at that time?

A. To my knowledge, they were not signatory to the agreement, therefore we did not represent them. [1013]

Q. All right, now, in the period from January 1, 1956, until the 8th of March, 1956, there has been testimony that there were some negotiations between labor unions and the Hanford Contractors Negotiating Committee. I wish to ask you who the Hanford Contractors Negotiating Committee was representing in connection with those negotiations?

A. We were representing the same group which we were representing prior to January 1st, 1956.

Q. Dr. McCaffree, what was the arrangement by which your salary was paid as executive secretary in the period from, say, October of '55 until your services were terminated?

A. I was hired, actually, as a subcontractor, a consultant, with the contract with the J. A. Jones Construction Company. This was a consultant agreement and, I think, took the general status as of a subcontractor.

Q. What type of a contractor was the J. A. Jones Construction Company with the Atomic Energy Commission?

A. They are cost-plus-fixed-fee.

Q. That is a reimbursable type of contract, then?

A. Yes, sir.

Q. So that is it a true statement, Doctor, that

(Testimony of Kenneth M. McCaffree.)

your salary then would have been reimbursed to J. A. Jones Construction Company by the Atomic Energy Commission? [1014]

A. That is correct.

Q. Now, there is evidence here, Doctor, that as of March 8, 1956, a meeting of March 8 with representatives of the Pasco-Kennewick Building Trades Council, some statement was made concerning the termination of negotiations by the Hanford Contractors Negotiating Committee. Were you present at that meeting?

A. What was the date again?

Q. March 8, 1956.

A. And who did you ask as representatives there?

Q. I asked if you were present at that meeting.

A. I was present at a meeting on March 8th, held in Richland, Washington.

Q. With representatives of the Pasco-Kennewick Building Trades Council?

A. I believe, if I recall correctly, that the meeting was between the Teamster Local 839 and representatives of the Hanford Contractors Negotiating Committee.

Q. All right, subsequent to the 8th, to your knowledge, were any negotiations held between the Hanford Contractors Negotiating Committee and the unions?

A. Which unions, now?

Q. The Teamsters, Operating Engineers, and Cement Finishers? A. None.

(Testimony of Kenneth M. McCaffree.)

Q. As of a date, any date subsequent to March 8, 1956, did [1015] you attend any meeting or meetings held by either the Associated General Contractors of America, Spokane Chapters, either Heavy Highway and Engineering, Construction and Building, or by the Federal Mediation and Conciliation Service?

A. There were three meetings held in March. They have been mentioned before. I believe March 10th, 16th, and 21st. I was in attendance at all of those meetings.

Q. On whose payroll were you at that time?

A. The same situation as previously, I was paid by the J. A. Jones Construction Company under the consultant agreement.

Q. And on whose behalf did you attend those three meetings that you have mentioned?

A. I was there as a representative and assistant to Mr. McReynolds, who was the project manager of J. A. Jones. I was, in effect, representing the J. A. Jones Company.

Q. You were not there as executive secretary of the Hanford Contractors Negotiating Committee, then? A. I was not.

Q. Doctor, do you recall an instance which occurred, I believe, in 1954, when certain forms relating to health and welfare benefits were brought to you? A. Well——

Q. Just state first whether you recollect such an instance? [1016]

A. Yes, yes.

(Testimony of Kenneth M. McCaffree.)

Q. Will you state from what organizations these forms were brought to you as the executive secretary of the Hanford Negotiating Committee?

A. They were furnished me by a representative from the Teamsters and also one from the Operating Engineers.

Q. Do you have available at this time any of those forms which were presented to you?

A. I do not.

Q. Can you state what the nature of them was?

A. Well, the nature was an agreement to be signed by the union and a particular employer whereby the payments to the health and welfare funds, which were then going into effect in July of 1954, could properly be made. I believe it was in recognition that a written agreement is required between the contractor and the union for payments to be legally made by a contractor to a trust fund, and the purpose of these letter agreements—they were printed forms in both cases, as I recall—was to get all contractors on the project properly signed so that they might properly make payments into these particular trust funds.

Q. What did you do with the agreements after they were delivered to you?

A. I took blank copies, enclosed them with a covering letter, [1017] and mailed them to all contractors whose names and addresses I had, who at that time I knew to have work on the project.

Q. Was Morrison-Knudsen Company working on the project at that time?

(Testimony of Kenneth M. McCaffree.)

A. They were not.

Mr. DeGarmo: You may examine.

Cross-Examination

By Mr. Etter:

Q. In September of 1955, what contractors were on the Hanford Area doing work under A.E.C. contracts actively who were signatory to the agreement, Dr. McCaffree?

A. The only firm which I know positively to have signed the agreement was the J. A. Jones Construction Company.

Q. Blaw-Knox were not there? A. No.

Q. Or Kaiser? A. No.

Q. And at that time, of course, Morrison-Knudsen hadn't come on the job? A. I believe not.

Q. Then, as I understand it, on behalf of J. A. Jones, I suppose it would be, you entered negotiations sometime in October or otherwise with the unions, did you? When [1018] did your negotiations on behalf of the Hanford Contractors Negotiating Committee start?

A. With respect to which crafts?

Q. With respect to any of them, first?

A. Well, as a matter of record, we were virtually in continual negotiations. There was some crafts whose Schedule A or other agreement was open for negotiation.

Q. I see. When were negotiations opened by you with the Operating Engineers, Local No. 370, and the Teamsters, Local No. 839?

(Testimony of Kenneth M. McCaffree.)

A. Well, I mailed letters on October 28th indicating that. I believe at that time I had received letters from both Mr. Davis and Mr. Rossman to the effect that they wished to open the agreement.

Q. I see.

A. From both. I couldn't be positive, it was approximately at the same time.

Q. What month? I didn't get you.

A. October.

Q. October. And I suppose that pursuant thereto, you had some meetings and exchanges of correspondence with them?

A. I answered their letters, yes, sir.

Q. That is what I mean. And had some meetings, is that correct?

A. We held a meeting on November 10th. [1019]

Q. On November 10th? A. Yes.

Q. Of 1955?

A. Yes. This was a meeting with the Building Trades Council.

Q. With the Building Trades Council?

A. Teamsters——

Q. Beg your pardon?

A. Teamsters and Engineers were there.

Q. Yes, they are associated and are members, are they not, of the Council?

A. Well, I have seen no written authorization to that effect. I have been told that that is true.

Q. I see. In negotiating with them, did you show them any written authorization from J. A. Jones?

(Testimony of Kenneth M. McCaffree.)

A. I was asked for none.

Q. I see. Did you ask them for any?

A. I asked—I believe not at that meeting.

Q. I see. Now, when was the next meeting that you had with them in 1955?

A. Who are “them”?

Q. Beg your pardon.

A. Who are them”?

Q. The defendants, Locals 839 and 370. I think you said your first meeting was November 10th at which they were [1020] present.

A. This was a meeting at which they were present?

Q. That’s right.

A. We held a meeting on December 14th, at which Mr. Charlie Knapp and Mr. Bud Shirk were present. Now, Mr. Shirk was secretary of the Building Trades Council and was the individual with whom I at that time was corresponding and talking by phone and otherwise concerning the status of the Hanford Works Agreement. I, at this point, do not recall whether there were any representatives of either the Engineers or Teamsters present at that meeting.

Q. You do not recall whether they were there at that meeting?

A. That is right.

Q. Can you tell me the date of a meeting that you had in 1955, and subsequent to November 10th at which you recall that the Engineers and the Teamsters were represented?

A. December 22nd.

(Testimony of Kenneth M. McCaffree.)

Q. December the 22nd? A. Yes, sir.

Q. And you were there, of course, in your capacity as secretary, as I understand it, of the Hanford Contractors Negotiating Committee?

A. That is correct, and I believe also at both of those [1021] meetings I served most of the time as spokesman for the committee.

Q. At those meetings?

A. I believe that is November 10th and December 22nd, 1955.

Q. Both meetings you have reference to when you acted as spokesman?

A. I do not recall that I was the spokesman throughout.

Q. I see.

A. Mr. Cochran or Mr. McReynolds on occasion was the spokesman for the committee.

Q. You did act, however, in the capacity as spokesman at times? A. Yes.

Q. Did you have any further meetings in 1955, after December the 22nd? A. No, sir.

Q. You did not. When was it, do you recall, that you had any further meetings, let us say, in 1956, with representatives of the Engineers, Operating Engineers 370, and Teamsters 839?

A. At which they were present?

Q. Yes, at which they were present or represented.

A. Well, there were representatives of both unions present at a meeting which I attended on the morning of January 5th. [1022]

(Testimony of Kenneth M. McCaffree.)

Q. On the morning of January 5th?

A. 1956.

Q. I see. That is the meeting that has been discussed here? A. Yes, sir.

Q. All right. Other than that meeting, can you tell us any meeting that you had with them in which there were negotiations or bargaining of any kind carried on subsequent to January 5th, 1956, and I refer now to the Teamsters 839 and the Engineers 370?

A. Would you read the question back? At least, the first part of it.

(Question read.)

A. There was a meeting on February 10th at which representatives of the Operating Engineers and Teamsters were present.

Q. Do you recall whether there was a meeting in mid-January or not?

A. As I recall, there was not.

Q. There was not. You sent some proposals, however, to the Teamsters and Engineers in mid January, did you not?

A. I did not. I sent a proposal to the Operating Engineers.

Q. To the Operating Engineers. In mid-January, is that correct? I think there is an exhibit here——

A. Well, I would like to refresh my memory whether it was [1023] mid-January or late January.

(Testimony of Kenneth M. McCaffree.)

Q. Well, fine. January 13th, would you recognize that or would that refresh your recollection?

A. Yes, January 13th.

Q. January 13th. As I gather, there wasn't any meeting preceded this that you recall?

A. The January 5th meeting?

Q. The January 5th meeting. I mean, where there was strictly the matter of negotiations and, let's say, subsequent to the January 5th meeting, there was none intervened between?

A. As I recall, there was not.

Q. Now, you, I think, became the executive secretary, you said, sometime in 1953, is that correct?

A. Yes, sir.

Q. And do you recall what time of the year it was, Mr. McCaffree?

A. March, 1953.

Q. In March of 1953. Had an agreement been negotiated then or prior to the time of your taking this position, had an agreement been negotiated for that year, that is, 1953, or did you participate in any negotiations for that year, as best you can recall?

A. Well, the basic agreement had been negotiated and signed the preceding fall before I arrived, and I understand [1024] also an attachment covering the Operating Engineers and the Teamsters had been previously negotiated, at least there were evidences that it had been signed.

Q. I see. You do not recall that you did any work or negotiation toward an agreement other than the basic agreement, that is, in the early part of '53?

(Testimony of Kenneth M. McCaffree.)

A. I did not participate in negotiating of the basic agreement.

Q. Yes. Now, in 1953, did you act as the secretary at negotiations that were subsequently carried on, that is, after your appointment in 1953, covering the year 1954?

A. Yes, sir. Maybe I should ask, to clarify, you are referring specifically to the unions in question or any unions connected with the Building Trades Council?

Q. Well, first, any unions?

A. Well, I think that I attended most of them.

Q. I see. Then did you also attend meetings as secretary for the Hanford Contractors Negotiating Committee with the Teamsters 839 and Operating Engineers 370?

A. Yes, sir.

Q. You did. And——

A. I attended most meetings with them in 1953.

Q. Yes. Looking toward agreement in [1025] 1954?

A. No, sir.

Q. Did you attend any meetings having to do with negotiating an agreement for 1954?

A. Yes, sir.

Q. With the Teamsters?

A. Yes, sir.

Q. And with the Engineers?

A. Yes, sir.

Q. I see. Now, in 1954 when you were acting as the secretary of this committee, Mr. McCaffree, how many contractors then on the project had signed the particular agreement authorizing negotiation by the committee of which you were secretary?

(Testimony of Kenneth M. McCaffree.)

A. What do you mean, signed authorizations?

Q. Well, as I understood it, you said that there were four that you know of that had signed the Hanford Agreement.

A. That is right.

Q. Is that what you testified to?

A. Yes, sir.

Q. All right, how many had signed the Hanford Agreement that you know of in 1953 when you were pursuing these negotiations that I have asked you about, if you recall?

A. I do not recall that as of 1953, prior to the negotiations which were held with the Teamsters and Engineers, that I knew that any particular contractor had signed [1026] the agreement.

Q. Do you know how many contractors were on the project working under A.E.C. contracts?

A. At what time?

Q. In 1953 and during the time when you were carrying on these negotiations as secretary of the Hanford Contractors Negotiating Committee with the defendants, Teamsters and Engineers?

A. I could only give you an estimate.

Q. How many?

A. Well, I would judge in the summer of '53 that there were perhaps 60 different contractors at that time.

Q. 60 different contractors?

A. This would be primes and subcontractors and three or four that I remember sub-sub-sub contractors.

The Court: Time to recess now until 2 o'clock.

(Whereupon, the trial in the instant cause was recessed until 2 o'clock p.m., this [1027] date.)

2:00 o'Clock P.M., Tuesday, June 18, 1957

(Whereupon, the trial in the instant cause was resumed pursuant to the noon recess, all parties being present as before, and the following proceedings were had:)

KENNETH M. McCAFFREE

having previously been sworn, resumed the stand and testified further as follows:

Cross-Examination
(Continued)

By Mr. Etter:

Q. Dr. McCaffree, can you tell me approximately about how many contractors were on the Hanford Project with A.E.C. contracts of some kind or other in 1954, or did you tell me that before?

A. I think our previous reference was with respect to the summer of '53.

Q. Oh, I see. Do you recall in '54?

A. Well, at the time of the work stoppage in January of 1954, there were 112.

Q. You are referring to '55, are you not?

A. No, '54.

Q. No, '54? [1028] A. This was——

Q. Another one? A. Another dispute.

Q. There were 112, you say?

(Testimony of Kenneth M. McCaffree.)

A. I believe that is correct. We counted them rather carefully. Again, this includes not only prime contractors and general contractors, but subcontractors and sub-sub-sub, and so on.

Q. That is correct. And in 1955, what was the situation then, early part of 1955?

A. Well, it was substantially reduced from the year previous. Again, I would be guessing, perhaps half that many, fifty or sixty.

Q. Substantially reduced in the latter part of '55?

A. Oh, yes, yes.

Q. Now, I notice here on January the 13th, you have identified this document as being a proposal that was made on behalf of the contractors, Hanford Contractors Negotiating Committee?

A. Yes.

Q. And I see Mr. McReynolds' name and I gather Mr. McReynolds is an official of some kind or other of L. H. Hoffman?

A. No.

Q. Did you say? [1029]

A. He is the project manager for J. A. Jones Construction Company.

Q. Oh, that's right, for J. A. Jones, and Mr. Garrett—

A. He was the project superintendent for the Sound Construction.

Q. Oh, I see. And Mr. Cochran?

A. The project manager for L. H. Hoffman.

Q. And you as the—

A. That is correct.

Q. —secretary. And then I notice that a further proposal appears sometime in March, ap-

(Testimony of Kenneth M. McCaffree.)

parently with Mr. McReynolds, Mr. Cochran. Mr. Cochran was Hoffman, was he not? A. Yes.

Q. And you, is that correct? A. Yes.

Q. And here is one, I think, on March the 2nd identified as having been sent—Exhibit No. 15—sent by you as executive secretary, is that correct, to the Teamsters 839? A. Yes.

Q. And in December, it has already been indicated from I notice here on the 15th, another proposal sent from you apparently on behalf of the Committee, which is Exhibit No. 12, is that [1030] correct? A. Yes.

Q. Now, I gather from your testimony that the Morrison-Knudsen Company has not signed the Hanford Works Agreement, is that right?

A. To my knowledge, they had not.

Q. They had not? A. They had not.

Q. And they did not. Now, in 1953 or on into 1954 when an agreement was negotiated, do you know whether the 40 or 50 contractors on the project to whom you have referred, whether they followed the terms of the agreement that had been negotiated by you for the committee or by the committee with you as secretary?

A. Now you are referring here specifically to Teamsters and Operating Engineers? I just want to be clear.

Q. Yes, yes.

A. In other words, when you asked me about agreements, it is applying specifically to the Operating Engineers and Teamsters agreement?

(Testimony of Kenneth M. McCaffree.)

Q. It is now, uh-huh.

A. Now, what was the question again?

Q. When you signed agreements with the Teamsters and the Operating Engineers in 1953, did the other contractors and subcontractors on the project, some 60 in number you have mentioned who employed members of those unions, [1031] did they observe the agreement or the conditions of the agreement which you had signed and negotiated with the Teamsters and the Engineers?

A. Well, I think you should clarify first that, to my understanding, the committee did not sign the agreements.

Q. All right——

A. To the extent that understandings were arrived at by the committee which I then forwarded copies of to contractors. As far as I knew, the contractors on the project did put those conditions into effect.

Q. They did put them into effect?

A. I would only learn if they did not, I think.

Q. If they did not. And inasmuch as you cannot recall, you assume that you did, is that what you are saying?

A. Well, I know of at least one case, apparently there was at least some disagreement as to whether they were put in effect or not.

Q. I see. Was that straightened up or not?

A. I don't know as to the final disposition.

Q. If I asked you that same question with re-

(Testimony of Kenneth M. McCaffree.)

spect to 1954, would your answer be the same, Mr. McCaffree?

A. I think that as far as I know, the contractors did follow the recommendations of the Hanford Contractors Negotiating Committee. [1032]

Q. And again in '55? A. Yes.

Q. Now, in other agreements you signed on behalf of the Hanford Contractors Negotiating Committee with other crafts involved on the project, if I asked you the same question with respect to those other crafts, would your answer be the same as to those three years?

A. Well, again, I would answer it this way, that so far as I know, the contractors did follow the recommendations of the Hanford Contractors Negotiating Committee.

Q. I see. Now, I notice on your stationery on all of these exhibits where they are Hanford Contractors Negotiating Committee, the bottom, Construction Contractors of the U. S. Atomic Energy Commission, Hanford Operations Office. Do you notice that? A. Yes.

Q. Well, actually, did that refer to all the construction contractors of the U. S. Atomic Energy Commission, Hanford Operations Office? Did that apply to all of the contractors with A.E.C. contracts on the Project?

A. Well, there, to the extent that my services went beyond that of the executive secretary of the Negotiating Committee, I did other tasks and other duties that involved all contractors. This stationery

(Testimony of Kenneth M. McCaffree.)

wasn't used solely in correspondence with the unions, you realize. [1033]

Q. No, but as I gather, in your educational background of some experience, not only in the formal part of the study of labor economics and collective bargaining, but also in the actual practice, have you not——

A. To some extent.

Q. To the extent, at least, that you have testified?

A. Yes, sir.

Q. Construction contractors of the Atomic Energy Commission, Hanford Operations Office, wouldn't you think, in collective bargaining negotiations, it could be assumed that this was representative of what it indicates there, construction contractors of the U. S. Atomic Energy Commission, Hanford Office, that that would be all-inclusive?

A. That phrase was added for a very particular reason, Mr. Etter.

Q. Well——

A. There are contractors on the project other than construction contractors.

Q. Whatever the reason may be, did you advise any of the unions of the qualification or the limitation of that particular phrase that appears on all of the Committee's stationery?

A. I was never asked by any of them.

Q. You were never asked and I assume you never volunteered it? [1034]

A. I saw no reason to.

Q. Well, when you were negotiating with them,

(Testimony of Kenneth M. McCaffree.)

did you purport to be representing, or your committee, the contractors that had A.E.C. contracts——

A. I think we were a group which purported to arrive at things which we could recommend to contractors at the Hanford Project. If they chose to follow them, it was the contractors' and unions' individual business.

Now, I think that the contractors whom I know to have signed that agreement did, in all instances, follow the recommendations of the committee. This was Kaiser Engineers, Blaw-Knox, Atkinson-Jones, and J. A. Jones. Now, there may well have been other firms that signed the contract; I didn't know as to this.

Q. But you don't know of any except the ones you mentioned while you were there?

A. I have not seen the signatures of any other companies other than those four.

Q. That is what I mean.

A. I have heard that there were other firms that did sign letters of intent, but I could not verify it myself.

Q. In other words, that would be, so far as your testimony here, that would be hearsay?

A. I believe so.

Q. Sure. Now, you sent a letter, as I gather it, of which [1035] this is a copy, and I am referring to Defendants' Exhibit No. 10, to both chapters, that is, the Builders Chapter and the Spokane Chapter. Would you examine that and tell me whether or not you are the author of that letter and whether

(Testimony of Kenneth M. McCaffree.)

you sent it to the parties indicated as addressees, both bottom and top?

A. Well, I sent the letter. I don't recall that I was entirely the only author of it.

Q. You sent the letter?

A. Yes, that is my signature.

Mr. DeGarmo: May I have the exhibit number, Mr. Etter?

Mr. Etter: Oh, 10, Mr. DeGarmo.

Q. You sent it as executive secretary of, I assume, the Hanford Contractors Negotiating Committee?

A. I believe the original carried the—well, the same heading as the other letter, the letter you had.

Q. I mean without having that, you were doing it—did you send it on authority of that committee?

A. I sent it on the letterhead of the committee.

Q. And with the authorization of the committee, or did you do it independently of the committee?

A. Well, I thought I was acting under the authorization of the committee. I was acting under the authorization of the committee. [1036]

Q. I see. Now, you say those bargaining rights which have been held by the Hanford Contractors Negotiating Committee on behalf of contractors working on the Hanford Project. Now, on March the 8th, what contractors working on the Hanford Project had signed the Hanford Agreement?

A. You mean the 1952 Hanford Agreement?

Q. No. As I understand, prior to this you had sent some type of a termination on December 29th.

(Testimony of Kenneth M. McCaffree.)

A. Yes.

Q. Now, when you sent this letter on March 8th, which contractor working for the A.E.C. on the Hanford Project, which contractor had signed, if any, the Hanford Agreement? In other words, which ones were you representing here that had signed the Hanford Agreement?

A. Well, to my knowledge, the only contractor on the Project on March 8th who I know to have signed the Hanford Works Agreement, in effect from 1952 through '55, was the J. A. Jones Construction Company.

Q. The J. A. Jones was a member of the Associated General Contractors, Spokane Chapter, at that time, were they not?

A. I do not know that that is true.

Q. Well, it has been so testified here, that the J. A. Jones became a member of A.G.C. in 1955. [1037]

A. I did not learn that until I was in this courtroom last week.

Q. So that when you sent this letter, you weren't representing any contractor that had signed the Hanford Agreement, were you?

A. I acted under the assumption and under the authority of the manager of the J. A. Jones Construction Company.

Q. I see.

A. As a representative of that Committee to do so.

Q. But assuming that the testimony here is

(Testimony of Kenneth M. McCaffree.)

correct, that J. A. Jones was a member of A.G.C. at the time you sent this letter, there was actually no member, no contractor, on the project with an A.E.C. contract who had signed the Hanford Agreement?

A. If I accept your assumption, the answer is correct.

Q. That is correct.

A. But I am not accepting your assumption.

Q. I see. Well, I say, assuming the testimony has been to that effect, you say that you didn't know it until you came into the courtroom and I assume that you heard it——

A. Yes.

Q. I see. You didn't know that at this time?

A. I did not.

Q. And at this time, you were representing, as I gather, only one, and that was J. A. Jones? [1038]

A. I don't know that I was representing only one. I think perhaps I shouldn't be using the "I" here; I think we ought to be using "we."

Q. The "we."

A. Let's clarify that it is the Hanford Contractors Negotiating Committee.

Q. All right, let's use that, then. Actually, then, the Committee was not representing anybody at this time that had signed the Hanford Agreement, were they?

A. I was acting under the assumption and the authority, so I believe even now, that I had the bargaining rights as a spokesman of the Hanford

(Testimony of Kenneth M. McCaffree.)

Contractors Negotiating Committee for the J. A. Jones Construction Company on March 8th.

Q. I see. Now, another thing on these contracts or these proposals that appear here as to—we'll take Exhibit No. 13 — Mr. Cochran, as I understand it, was a member of the negotiating committee, was he not? A. Yes, sir.

Q. And he was an employee and some representative of L. H. Hoffman?

A. He was the project manager.

Q. Project manager. Yet, L. H. Hoffman had never signed the agreement, had they?

A. I do not know. [1039]

Q. Well, you have never seen their signature?

A. That is right.

Q. And that is likewise true of the proposal that is marked and appears as Exhibit 14 with Mr. Cochran's name? It is the same Cochran, is it not?

A. Yes.

Q. And you have not seen any contract that he ever signed, at least, the Hanford Project contract?

A. There is no reason why I should see it, necessarily.

Q. I see. Now, at the time you sent the letter to Mr. Guess that is indicated here and marked as Exhibit No. 10, which you had here just a minute ago, I gather it was your intention on that date, on March the 8th, to assign only the bargaining rights of J. A. Jones, is that correct?

Mr. DeGarmo: I submit the document speaks for itself as to what he purported to do. It says "Any

(Testimony of Kenneth M. McCaffree.)

signers of the Hanford Works Agreement." If the J. A. Jones was the only one, then that is what he did, but the document speaks for itself.

The Court: Well, he may answer the question.

The Witness: Would you repeat the question, please?

Q. (By Mr. Etter): I asked you if, when you sent that letter, you were then under the impression that you [1040] were assigning only J. A. Jones' bargaining rights?

A. I was not under that impression.

Q. Well, what rights were you assigning?

A. I was assigning whatever rights the Hanford Contractors Negotiating Committee had on behalf of any contractors who became members of A.G.C. who had not previously authorized the A.G.C. to serve as their bargaining agent.

Q. In other words, you sent that with the intention of assigning at least the rights of all contractors as they had existed and been exercised for the years that you had been on the project?

A. And I think I also should note, you should note, that there were other associations involved other than the A.G.C. — the P.D.C.A., the Painters, Decorators, the Inland Empire Sheet Metal Association, all of whom would be involved in this, as well as the A.G.C.

Q. You were assigning all that to the A.G.C.?

A. No.

Q. I see.

(Testimony of Kenneth M. McCaffree.)

A. I was assigning only those bargaining rights which we could assign to A.G.C.

Q. Which ones were those now? Tell us again.

A. Well, the bargaining rights which the Hanford Contractors Negotiating Committee held were those [1041] rights of those contractors that had signed the Hanford Works Agreement.

Q. Well, then, that was only J. A. Jones, wasn't it?

A. To my knowledge, that was only J. A. Jones. There may well have been other contractors.

Q. Without your knowledge at that time, J. A. Jones was a member of A.G.C. and had been since 1955?

A. Would you restate that question, please?

Q. And at that time, without your knowledge, as I gather, but according to the testimony here, J. A. Jones had been a member of A.G.C. from 1955 to 1956?

A. I think it is a matter of fact, and perhaps I am reporting hearsay, the question of his membership in 1955 is now in doubt, it is not a fact in the mind of J. A. Jones Construction Company.

Q. What membership are you talking about?

A. In the Heavy Chapter in 1955.

Q. You say——

A. I perhaps should say I have no knowledge of this.

Q. You have no knowledge. I was merely asking if that has not been the testimony here?

A. I understand that it has been.

(Testimony of Kenneth M. McCaffree.)

Q. From Mr. Guess, the secretary?

A. Yes, that is correct.

The Court: Perhaps there is a little [1042] misunderstanding between the witness and counsel. What the testimony shows is not always the fact, necessarily.

Mr. Etter: That is true. That was the testimony, though, that is what I am asking you.

A. I didn't understand it that way. It was the testimony that Jones was a member in 1955.

Q. Now, as I gather, you were at a meeting, a joint meeting, on March the 8th, were you?

A. What kind of a meeting when?

Q. Was it a joint meeting of the A.G.C. committee and of you just prior to the time this letter was drafted? Were you present at a meeting where there was some verbal statement made that, "A.G.C. is now going to handle my bargaining rights, or the Hanford Contractors Committee's bargaining rights," or some such statement in that vein?

A. Well, there was a meeting between the representatives of the Teamsters and the representatives of the Hanford Contractors Negotiating Committee on March 8th. Is this the meeting you have in mind? I am not quite clear on it, frankly.

Q. Yes, I have that meeting in mind. Was there something said by either you or Mr. Guess to the labor representatives at that meeting?

A. Mr. Guess, to my recollection, was not present at that meeting. [1043]

Q. He was not present. Well, I am trying to

(Testimony of Kenneth M. McCaffree.)

determine whether or not you were at a meeting where the unions who were there were orally advised that A.G.C. would handle their negotiations and your committee's negotiations thereafter?

A. Well, I believe at the conclusion of that meeting, it was the oral expression of the spokesman, and I don't recall which—I believe Mr. Cochran was serving as the spokesman at that time—advised Mr. Sewell Davis that the bargaining rights which the committee had with respect to the negotiations or the practice that had been carried at Hanford were being given to the A.G.C. on the basis of contract or memberships in the A.G.C.

Q. I see.

A. A notation which I have is, the statement was made, "as of tomorrow," which would have been March 6th, "whatever bargaining rights the Hanford Contractors Negotiating Committee has held for Hanford contractors for negotiation with the Teamsters are hereby assigned to the A.G.C. on the basis of contractor memberships in those chapters.

Q. Was such a statement made, too, do you know, to the Operating Engineers at that meeting or a subsequent meeting that you attended?

A. Well, a letter, one of the exhibits here, was mailed to [1044] the Operating Engineers. Wasn't it Exhibit 10, that letter?

Q. That is correct, advising them of that fact?

A. Yes. I do not recall, but I believe I called Mr. Dunn or Mr. Rossman that same day and talked to them, but I can't at the moment be positive.

(Testimony of Kenneth M. McCaffree.)

Q. They were advised, however? A. Yes.

Q. Who, at that time, at that meeting that you are talking about when the oral statement was made that you have indicated to the Teamsters, what A.G.C. representatives were present?

A. Mr. Helvy of the Builders Chapter was present.

Q. I see. I think you said in your direct testimony that you were at the meeting representing J. A. Jones? A. Where?

Q. At this meeting, did you testify——

A. I did not testify that I was representing J. A. Jones on the meeting of March 8th.

Q. You testified that you were not?

A. That I was not. I was at that time acting——

Q. As Committee spokesman?

A. Executive secretary of the Hanford Contractors Negotiating Committee and serving as spokesman, at least part of that meeting. [1045]

Mr. Etter: That is all.

The Court: Any redirect?

Redirect Examination

By Mr. DeGarmo:

Q. Dr. McCaffree, you mentioned a matter of a work stoppage in 1954. Did that work stoppage result in some arbitration proceedings?

A. Well, the dispute in January, 1954, was actually with the Carpenters. Some would say it was partly over the question of isolation pay.

(Testimony of Kenneth M. McCaffree.)

Q. Was there in 1954 held an arbitration proceeding of some kind in which at least the defendant Teamsters Union was involved?

A. Yes, yes, in June of 1954.

Q. Do you recall who was present at that arbitration meeting representing the Teamsters Union?

A. I believe Mr. Joe Morrell was there, who was the secretary-treasurer of the Union preceding Mr. Davis, who preceded Mr. Lewis.

Q. At this meeting, and in the presence of Mr. Morrell, did the question arise as to who the Hanford Contractors Negotiating Committee acted for at Hanford Works?

A. As I recall, this was the first question which Mr. Bassett, who was the attorney for the Teamsters, asked [1046] Mr. Gordon Johns, who was the attorney for the Committee and represented the contractors.

Q. And was there a statement made in response to that question?

A. The statement made is identical with the one I have given here, is that the committee represented those contractors who were signatory to the Hanford Works Agreement.

Q. And that was in 1954?

A. That is correct.

Q. Now, reference has been made rather numerous times by Mr. Etter in his cross-examination of you to the fact that certain of the members of the Hanford Contractors Negotiating Committee held positions with some contractors who might have been

(Testimony of Kenneth M. McCaffree.)

doing work on the Project. I wish to ask you if on any of these documents which were shown to you there is any designation indicating that these people, either Mr. McReynolds, Mr. Garrett, Mr. Cochran, or Kenneth McCaffree, signed as a representative of their employer?

A. There is no indication that they so signed. It was the explicit statement on numerous occasions by spokesmen for the committee that the committee was there as individuals and, as such, did not represent the firms who happened to be their [1047] employer.

Q. I noticed he asked you about everybody except—did he ask you about Mr. Garrett, what was Mr. Garrett's position?

A. He was project superintendent for the Sound Engineering and Construction Company.

Q. For the Sound.

Mr. DeGarmo: I guess he did ask about Mr. Garrett.

Q. You say this was a matter which was mentioned on more than one occasion?

A. Oh, yes; on several occasions.

Q. At which meetings representatives of the Teamsters and Operating Engineers were present, or the Pasco-Kennewick Building Trades Council, at least, in which they were members?

A. Oh, yes; of that I am positive. I would need to consult the records to be sure, but I felt confident that even in Teamster and Operating Engineer meetings that statement had been made; that

(Testimony of Kenneth M. McCaffree.)

is, over the period, of course, from '53 through '55.

Mr. DeGarmo: I have no further questions.

Mr. Etter: None.

(Witness excused.)

Mr. DeGarmo: Call Mr. Bacon. [1048]

FRANCIS H. BACON

called and sworn as a witness on behalf of the plaintiff in rebuttal, was examined and testified as follows:

Direct Examination

By Mr. DeGarmo:

Q. Your name is Francis H. Bacon?

A. Yes, sir.

Q. And you are commonly referred to as Frank, rather than Francis?

A. That's right.

Q. Where do you reside, Mr. Bacon?

A. I live in Richland, Washington.

Q. And by what organization are you employed?

A. The Hanford Operations Office of the United States Atomic Energy Commission.

Q. For what period of time, Mr. Bacon, have you been employed by the Atomic Energy Commission in one capacity or another?

A. Oh, for about the last nine and a half, ten years.

Q. And during that last nine and a half or ten years, during what portion of that have you been situated at Richland, Washington?

(Testimony of Francis H. Bacon.)

A. During the entire period, sir. [1049]

Q. Will you state, Mr. Bacon, in some detail the various positions which you have occupied during this period of nine and a half or ten years with the Atomic Energy Commission at Richland, Washington?

A. I might preface that by saying that we have a very small staff compared to the amount of territory that we have to cover in observing the actions of all the contractors and all of their employees, so perhaps we do wear, necessarily, numerous hats. I will confine it to those that apply to this proceeding, perhaps.

My official capacity is deputy director of the organization of personnel division and, more particularly concerned with contractor personnel having to do with the obligations of the contracting agency of A.E.C. to delve into the wages and hours and working conditions of the various contractors on the project.

Q. Those would be the contractors holding contracts with the Atomic Energy Commission for construction work? A. That is right.

Q. In the course of your duties, have you also had occasion to become familiar with the organizational and operational management of the Atomic Energy Commission and the Hanford Works?

A. Yes, sir.

Q. And I think you stated that your present official office [1050] is deputy director of organization and personnel? A. That is right.

(Testimony of Francis H. Bacon.)

Q. Mr. Bacon, will you tell us first, for the record, somewhat of the geographical setup of the Hanford Works, that is, where is it located and is there an area outside of the barricade, is there a barricade, if so, what is a barricade? In other words, give us the picture for the record of what this Hanford Works Project is, geographically speaking.

A. It is an area comprising some 600,000 square miles and approximately the size of the state of Rhode Island. The Columbia River forms the northerly and easterly boundaries, the Yakima River the southern boundary, the Rattlesnake range of mountains the westerly boundary. It penetrates into Franklin, Grant counties, and it is primarily located in Benton County, and I think there was only 600 square miles, instead of 600,000.

Q. You got a few extra oughts on there.

A. Right.

Q. Is there a portion of this area which is commonly designated as Richland Community?

A. That is right, sir.

Q. And where is that located with respect to the entire area?

A. That comprises the city of Richland, which was formerly [1051] before the project a small village of about 240 people, and it is now expanded into the main living quarters for project employees comprising about 28,000 people. It is located at the southerly part of the project and, excepting for a small area which is utilized for administrative purposes, it is all open. What we mean, it isn't behind

(Testimony of Francis H. Bacon.)

any barricade, it is an open city. The barricade itself where the plants are located is north of the city of Richland and north of Camp Hanford and it is, just as the name implies, it is a barricaded area where certain security provisions apply and people must have security clearance to have access to that area.

Q. During the years 1955 and 1956, Mr. Bacon, were private vehicles permitted to drive into the area which was behind the barricade or through the barricade?

A. By properly security-cleared people, yes.

Q. And would that apply to members of the Operating Engineers and the Teamsters?

A. Yes, sir, who were employed on the job.

Q. Who had a reason to be there?

A. Yes, uh-huh.

Q. Mr. Bacon, by what agency or means are criminal laws enforced in the area, the area known as Hanford Works?

A. I would have to answer that that they are enforced by the county sheriff's office, either directly by the [1052] sheriff or his deputies or by deputies who are on the Project who have been deputized by the county sheriff.

Q. Are there persons upon the project, both in the Richland Community area and in the area behind the barricade, who are deputy sheriffs of Benton County?

A. That is right, sir.

Q. And of other counties?

A. Yes.

Q. In which part of the property lies?

(Testimony of Francis H. Bacon.)

A. Yes; I didn't intend to confine it entirely to the sheriff of Benton County.

Q. You didn't, you said, "sheriffs."

A. Yes.

Q. Now, these individuals, do they occupy any position other than as deputy sheriffs?

A. Yes; there is the plant guard forces in the plant itself and the village police force in the village of Richland.

Q. Is it true that certain of those individuals, or perhaps all of them—you can tell us—are both guards or police, depending on whether they are inside the area or outside, and at the same time deputy sheriffs?

A. They are at the same time deputy sheriffs, they are all deputized, yes, sir.

Q. They are all deputized. To what authority, Mr. Bacon, do [1053] these guards or policemen go in the enforcement of criminal law for instructions or for their authority?

A. The authority is entirely the county laws, codes, and regulations, speed limits, traffic regulations. I think I could go on and on and say even beyond the deputies themselves, the sanitary codes and the public health, and so forth, is subject to the same regulations as elsewhere in the counties.

Q. What difference, if any, Mr. Bacon, is there in the government's ownership of property in the area which is known as Hanford Community and that which is behind the barricade?

A. I wonder if I understood that correctly?

(Testimony of Francis H. Bacon.)

A. I am asking if there is any difference in the character of the government's ownership of property in the Hanford Community and that within the barricade?

A. There is to this extent, sir: The land itself is presently all owned by the government, the same both inside and outside the barricade on the project. However, outside the barricade, there are some stores and business districts and commercial facilities the buildings of which have been financed by private monies.

Q. Those are on properties which have been either leased or taken under concession from the government?

A. That is right. [1054]

Q. But is there any difference in the actual ownership by the government regardless of where the property is located other than as you have stated?

Mr. Carey: I think——

A. Until last week——

Mr. DeGarmo: Just a minute, there is an objection.

Mr. Carey: It seems to me that you are now examining the witness on the stand concerning land titles. I don't know that he is qualified.

Mr. DeGarmo: I will ask him some questions about his qualifications.

The Court: I think, so far as land ownership is concerned, probably the title evidence would be the best evidence, the documentary evidence.

Mr. DeGarmo: I think it is here in the requests

(Testimony of Francis H. Bacon.)

for admissions and admissions, so we don't need to go behind that.

Mr. Carey: Your Honor, I doubt if anybody here knows more about that than you do yourself as a matter of judicial notice. The legal proceeding by which this title was acquired was initiated before Judge Schwellenbach and I think your Honor concluded it.

The Court: Insofar as it has been concluded.

Mr. Carey: Yes. Then if your Honor [1055] doesn't know what the state of the title is, I doubt if a layman does.

Mr. DeGarmo: Maybe we will have a determination in this case, Mr. Carey, if you will bear with us a few minutes.

Q. (By Mr. DeGarmo): Mr. Bacon, are there within the area known as the Richland Community any courts, either Superior or justice?

A. There is a justice court there, yes, sir.

Q. Do you know in what manner the justice of the peace is selected or chosen?

A. I am afraid I don't know what manner any justice of the peace is chosen. I believe it is by the county supervisors, but he is operating as a part of the Benton County unit from Prosser.

Q. He actually has his office, however, and his court within Richland Community?

A. That is right, and the clerk.

Q. Mr. Bacon, from what source does the school system in Benton County derive its funds for the

(Testimony of Francis H. Bacon.)

support of a school system within Richland Community? A. (No response.)

Q. Perhaps I——

A. I believe I would have to answer that this way, that the Richland School District is School District No. 400, [1056] which is under the Washington State Department of Education, the same as other school districts are, and they receive their per capita from the state the same as other school districts do.

Q. Is there some arrangement, Mr. Bacon, by which the Atomic Energy Commission contributes toward the support of that particular school district?

A. Yes; they have contributed considerable funds to the school district, principally for expansion of the buildings and also to support, or supplement the support of the schools, the operation of the schools.

Q. Has that been by virtue of written contracts?

A. Yes, sir.

Mr. DeGarmo: Will you mark these as exhibits, please?

Mr. Carey: Is that the same——

Mr. DeGarmo: These are the same, these are the ones which I presented and which you have, I think, admitted existed but subject to some proof, perhaps. These are the same ones I presented to you in requests for admissions.

Mr. Carey: I think we admitted it.

Mr. DeGarmo: I think so, but on the same basis as some of the others, I think that it is easier to

(Testimony of Francis H. Bacon.)

refer to them as exhibits rather than attached to the requests [1057] for admissions.

The Clerk: Plaintiff's 17 and 18 for identification.

Mr. Etter: No objection.

Mr. DeGarmo: I wish to offer these two exhibits.

The Court: They will be admitted, then.

Mr. DeGarmo: 17 and 18, at this time.

(Whereupon, the said documents were admitted in evidence as Plaintiff's Exhibits Nos. 17 and 18.)

Mr. DeGarmo: I think those can be stapled together and given one single exhibit number.

The Clerk: All right, that will be the Plaintiff's 19.

Mr. DeGarmo: I am offering into evidence at this time, if your Honor please, a certified copy of an ordinance adopted by the Benton County Commissioners entitled:

"An ordinance relating to the licensing and operation of vehicles over and upon highways, streets, roads, alleys, parking areas, or other areas where vehicle traffic is permitted, within the Hanford Works, Benton County, Washington, and repealing ordinance of [1058] May 10, 1944, and an amendment to that ordinance dated June 6, 1955."

Mr. Etter: Are these the two copies of which——

Mr. DeGarmo: Yes, sir; I just gave you copies of them.

Mr. Etter: We have no objection.

(Testimony of Francis H. Bacon.)

Mr. DeGarmo: Certified copies.

The Court: 19 will be admitted, then.

(Whereupon, the said document was admitted in evidence as Plaintiff's Exhibit No. 19.)

Q. (By Mr. DeGarmo): Mr. Bacon, as a resident of Richland, Washington, do you vote?

A. Yes, sir.

Q. Has there been a time since when you took up residence at Richland when you have not been permitted to vote as a citizen of the State of Washington, to your knowledge?

A. No, sir; I don't believe I even had to wait. I had been a resident of the state before my moving there, so I had legal residence in the state.

Mr. DeGarmo: As I recall, Mr. Carey, I am testing my memory now, the contract on Workmen's Compensation I believe you admitted?

Mr. Carey: That is correct.

Mr. Etter: That is correct. [1059]

Mr. DeGarmo: So it is in the requests for admissions?

Mr. Etter: That is correct.

Q. (By Mr. DeGarmo): Mr. Bacon, are you familiar with the document that has been referred to throughout this trial as the Hanford Works Agreement?

A. I am quite familiar with it, yes, sir.

Q. And have you been so since its inception?

A. Yes, sir.